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LABOUR LEGISLATION

A STUDY PREPARED FOR THE
ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

BY

A. E. GRAUER

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OTTAWA

1939

Labour Legislation

EDITORIAL FOREWORD

Dr. A. E. Grauer, Director of the Department of Social Science at the University of Toronto, was retained by the Royal Commission on Dominion-Provincial Relations to prepare a summary of labour legislation and social services in Canada. He was asked to include a brief historical account, a clear statement of the present position, an analysis of the efficiency and adequacy of the existing provisions, and a detailed treatment of certain related phases of public finance and jurisdiction. The method of presentation and any expressions of opinion are solely the responsibility of the author, and not of the Commission.

The following study deals with labour legislation in Canada. A large portion of this work is necessarily devoted to a detailed review of the diverse provincial legislation, for except in certain limited fields such as inter-provincial and foreign trade, and Dominion Government employees, jurisdiction is reserved to the provinces. When this allocation of jurisdiction was made at Confederation conditions were, of course, very different from those prevailing today, and it was only as industrialization developed, and brought with it new social problems and new economic vulnerability that certain weaknesses in the original jurisdictional plan became evident. The wide variations in Canadian standards are shown to have frequently penalized both labour and business, and to have caused regional friction and unnecessary loss. [Perhaps more important, the apparent impossibility of securing united national action, even when no significant differences of opinion or of prevailing standards exist, has prevented our dealing effectively with the labour

and related social problems which are of outstanding importance today.) It has grown increasingly apparent that just as the effects of unsatisfactory labour conditions can no longer be isolated in the local community, neither can the underlying causes and abuses be attacked effectively in an unplanned and unco-ordinated piecemeal fashion. This suggests one of (a) national jurisdiction and action, or (b) concurrent national and provincial powers, with the expectation that these will be used to establish national minimum standards which individual provinces may exceed, or (c) machinery for effective provincial co-operation.

The contents of the study include chapters on minimum age, hours of work, wage regulation, trade union, factory inspection, employment service, arbitration and conciliation provisions, apprenticeship, technical education, and workmen's compensation legislation. Under each head Dr. Grauer cites provincial legislation, any Dominion legislation, and uses the relevant International Labour Office Convention as a convenient standard for appraising Canadian legislation. He also compares Canadian performance with that in other countries. A summary (pages 174-182) presents the author's conclusions.

The first draft of this study was completed in August, 1938, and after having been circulated to the Dominion and provincial governments for comment, was revised where necessary and put in its present form in the spring of 1939.

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LABOUR LEGISLATION

Historical Introduction

Modern labour legislation began, naturally enough, in the oldest industrial country, England. It is usually regarded as beginning with the English Health and Morals of Apprentices Act of 1802, although both working conditions and wages, and the relations between masters and servants had been regulated in many earlier statutes reaching back into the Middle Ages. The Act of 1802, therefore, marked a return to state interest in working conditions after a relatively short period of laissez-faire. Although its immediate inspiration was humanitarian, the basic reason for the broadening stream of labour and social legislation that was to follow was simply that it was necessary for the preservation of industrial society. The rapidly growing industrial system soon became so complicated both in its social and economic implications that unrestricted competition seemed certain to lead to chaos. In the long run it was to the interests of the employer as well as the employee for the state to set limits to free competition where social interests were involved.

In 1824-25, the right to form unions was legally recognized and this added a powerful factor to the agitation for labour legislation. With the advent of the "new model" or craft unionism after the middle of the century, trade unionism soon

became strong enough to have weight politically and was able to broaden the field of state intervention and to accelerate the tempo of labour legislation. The scope of such legislation widened from sentimental protection of the weakest workers to practically the whole field of relations between the employer and the employee. With the formation of the Labour Party, the unions had a direct voice in Parliament and were in a position to bring pressure for improved working conditions on a wide front.

A similar development took place in other countries as they became affected by industrialism. In both Germany and France the first labour legislation was for children and the development led to the formation of political parties.⁽¹⁾ It remained for one of these countries, Germany,⁽²⁾ to blaze the trail for compulsory social insurance. Sickness insurance was put on the statute books in 1883, accident insurance the

(1) In the new world, a marked contrast is afforded by North America, on the one hand and the Antipodes on the other. In North America, trade unionism has never been as strong as in Europe and workers' political parties did not develop. In Australia and New Zealand trade unionism is even stronger than in Europe and Labour Parties have arisen. Labour legislation, exclusive of social insurance, has reached perhaps its widest development in Australia and New Zealand.

(2) Social insurance and labour legislation may from the historical point of view be treated together. They are both aspects of the modern trend that gives statutory recognition to the social and economic problems of the wage-earners. The subject of social insurance is dealt with in detail in another volume, Public Assistance and Unemployment Insurance.



(3)

following year, and old age pensions, five years later.

The rapid spread of social insurance to other countries indicated the definite need it filled. At first the compulsory method met opposition, especially in Great Britain and the Latin countries of Europe, but the alternative principle of subsidized voluntary insurance has been fighting a losing battle. Its great defects are its inadequacy of coverage and its expense to the state; it produces an almost irresistible pressure for larger subsidies. The Congress of Social Insurance, an international body which had provided a testing ground for this controversy, acknowledged in 1908 the superiority of the compulsory principle. History shows no country deserting the compulsory for the voluntary method, but records numerous instances of the reverse procedure. (4)

The spread of social insurance throughout the western hemisphere was interrupted by the Great War but both social insurance and labour legislation have since become more prominent than ever. The idealism engendered in "The War to make the world safe for Democracy" and the promises given to the workers to reward their loyalty during the struggle made for post-war action to achieve a greater measure of "social justice". This is most strikingly shown in the Treaty of Peace itself. Article 23 of the Covenant of the

(3) The chief reason for this delay was the opposition of business which claimed that the financial burdens being put on employers were too heavy and that German business would be penalized in international competition. Business stressed savings institutions and similar methods for encouraging thrift and thus meeting these problems, and feared the effect on the worker's character of undermining habits of thrift. In most other countries business has initially opposed social insurance because of the natural fear that its competitive position would be weakened, but subsequent history has not borne out these fears.

(4) This process continues at the present time. Belgium has been the most important country recently to announce a change from the voluntary to the compulsory principle.

League of Nations states,-

"subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the members of the League will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations".

The preamble to the Labour Section of the Treaty (Part XIII, Articles 387-427) shows the spirit in which this aim was carried out:-

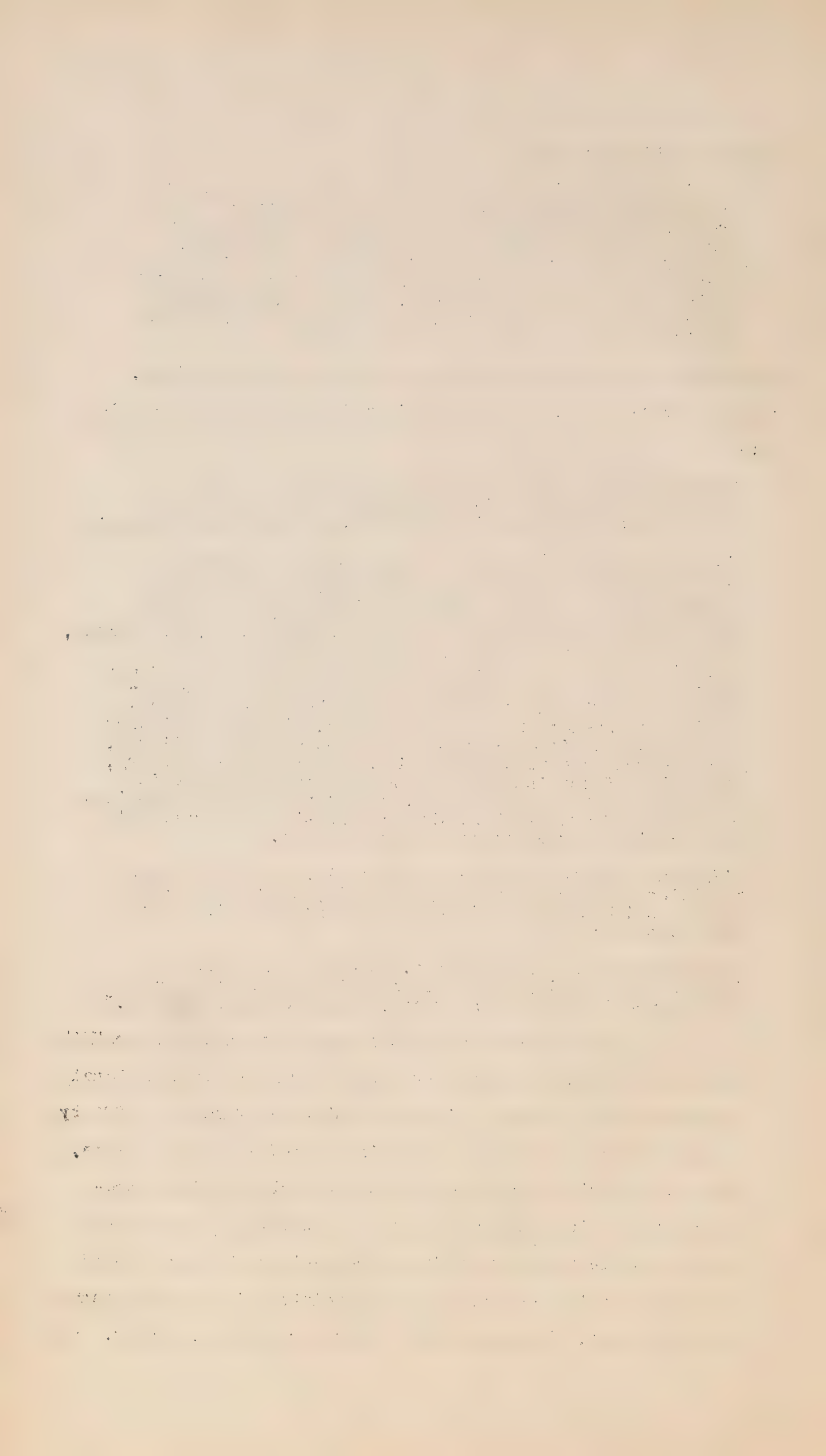
"Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

"And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

"Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

"The High Contracting Parties, moved by sentiments of justice and humanity, as well as by the desire to secure the permanent peace of the world, agree to the following."

The International Labour Organization which Part XIII provided for was a logical development from the International Association for Labour Legislation which was formed in 1900 by a group of economists and others interested in social reform. Over 25 countries including Canada had sent official representatives to its conferences and it was largely due to the Association that the Peace Treaty recognized the part played by social justice and fair labour conditions in the maintenance of world peace. International labour legislation, however, can



(5)

only be suggested to the various sovereign states and the chief bars to ratification apart from apathy have been first, the fear of the business men of any given country that immediate ratification will raise their costs and penalize them in international competition; second, the slowness of federally organized countries in working out some technique whereby ratification does not fall between the stools of central and local authority. Despite these serious handicaps, the International Labour Organization has had an active existence. Its proposed legislation, embodied in conventions and recommendations⁽⁶⁾ covers a wide array of subjects vital to the welfare of labour, and there has been a good measure of ratification.⁽⁷⁾

Since the Great War, the Great Depression has been the chief stimulus to labour legislation and social insurance. The note sounded has not been so much the ideal of social justice as political and even financial expediency. For instance, the shorter working week was favoured in unexpected quarters

(5) Such legislation is suggested at annual conferences where each nation is represented by delegates for the employers, the workers and the state. If a two-thirds majority of the delegates favours a proposed piece of legislation, it is sent to the member-nations. The competent authority in any nation undertakes to consider the proposal within eighteen months at the latest and if a favourable decision is communicated to the secretary-general of the League of Nations, that authority is bound to implement the proposal with legislation of its own.

(6) When a proposal is in the form of a Convention it necessitates a decision for or against within eighteen months by the competent authority in each member-nation. A Recommendation is less strong and is, in fact, exactly what its name implies, - a recommendation for national legislation.

(7) See Chapter XIV.

not because it would give the workers more leisure and possibilities for a fuller life but because it would spread work; and the current singling out of unemployment insurance for governmental attention in many countries is dictated by the appalling costs of direct relief and the hope that unemployment insurance benefits will give some protection to public treasuries in future depressions and will, by sustaining purchasing power, tend to mitigate these depressions. But although there is this noticeable difference in the nature of the stimulus, the fact remains that the world appears to be in a period of heightened activity in the fields of labour legislation and social insurance.

It is pertinent to note that differences in form of government do not seem to have mattered in this development. Labour legislation and social insurance are as characteristic of fascist Italy as of democratic countries, and remain a fundamental of the communist system of Russia.

The conclusion suggested by a historical approach to the subject is that labour legislation and social insurance are integral parts of modern social and economic systems and that this is true under any form of government. The advancement of the welfare of the workers and underprivileged by governments is the subject of international treaty, is an obligation acknowledged again and again by the statesmen of all countries, and is firmly established in actual policy.

LABOUR LEGISLATION IN CANADA.

Foreword

Under the British North America Act, most legislation concerning labour falls within the jurisdiction of the provincial legislatures under Section 92, subsection 13, which lists "Property and civil rights in the Province" as one of the exclusive powers of provincial legislatures. However, the Dominion Parliament has jurisdiction over workers in the fields specifically allotted to the Parliament of Canada by Section 91, such as employees of the Dominion government, workers in interprovincial transportation, seamen and employees on Dominion public works.

Canadian labour legislation is consolidated in no neat body of statutes and is a complicated subject. This memorandum will be divided into two parts, the text and the appendices. In each, the major kinds of labour legislation are considered individually and with three ends in view; first, a description of Dominion legislation, if any; second, a comparative analysis of provincial legislation; third, an estimation of the extent to which the Dominion and provincial legislation implements the international legislation of the International Labour Organization. The text of the memorandum is kept as brief as possible and deals with salient facts only. The appendices provide further details.

Note on International Legislation

The conventions of the International Labour Organization are used as an international standard because (1) they have been adopted by the representatives (employer, employee and government) of a majority of the industrial countries; (2) their aim is not to provide an idealistic or ultimate body of legislation but a code that nations can feasibly adopt at the present time if they have not already done so.

Their use in the following pages is primarily as a yardstick by which to measure lack of uniformity and gaps in Canadian labour legislation. It is not suggested that uniformity and completeness in Canadian labour legislation are

desirable solely or chiefly because of the international conventions, because the basic reasons for those aims lie in considerations of internal policy.⁽⁸⁾ However, as one of the main purposes of the I.L.O. is to get the legislation of backward nations up to higher levels so that the programmes of progressive countries will not be retarded, it is obviously to the advantage of Canada to meet international obligations and take its place as a country with at least as high standards as those laid down in the conventions. As Tables 21 and 22 show, Canada falls far short at the present time. It would be relatively easy for Canada to implement some of the international conventions either because she has few workers of the kind they cover or because her standards are already in fairly close agreement with them. In either case, ratification would help set international standards of fair competition with respect to labour, which should be to the advantage of Canadian industry.

(8) See Chapter 14.

Chapter I. Legislation Concerning the Minimum Age for Employment.

Historical Note to Canadian Labour Legislation:

The development of labour legislation in Canada closely reflects the growth of industrial conditions. The first Factory Acts were passed in Ontario and Quebec in 1884 and 1885, respectively, and prohibited the employment of boys under twelve and girls under fourteen years of age. The employment of children in mines had been prohibited even earlier in Nova Scotia and British Columbia. Declaration of the National Policy in 1879 was followed by a mushroom-like growth of small factories and construction projects. Previously, industry had been very small and very local. Under these conditions local public opinion was sufficient on the whole to see that reasonable standards were observed. Under the new conditions, this check no longer operated and exploitation rapidly developed, providing both the need and the demand for labour legislation. As mining had developed earlier than manufacturing in Canada, it is not surprising to find that legislation concerning work in mines preceded legislation about work in factories. With both mines and factories the first legislation was for the protection of children because they were the group among whom exploitation was the most obvious and about whom public opinion was most easily aroused. But with the growth of industrialization and urbanization, the lack of the restraining influence of the old local conscience made legislation for all workers necessary.

Summary of legislation about the minimum age for employment:

The first modern labour legislation enacted in any country was for the protection of women and children employed in
(9)
factories. Work by children below a specified age is now for-

(9) For a history of legislation in Canada concerning the employment of children and young persons, see "The Employment of Children and Young Persons in Canada", 1930 by the Department of Labour, Ottawa.

bidden by law in almost all industrial countries. Previously, the chief reason for such legislation was the safeguarding of the health and character of future citizens. Of late years a higher minimum age for employment has been widely advanced as an aid to the solution of the problem of unemployment because during periods of depression child labour tends to displace adult labour on account of its cheapness, and more especially because children employed at an early age without provision for training or adequate education are likely to become unemployable adults.

At the present time in all the provinces but Prince Edward Island, the employment of children below a certain age in factories is unlawful; and in the Yukon and in all the provinces where mining operations are carried on, except (10) Manitoba, there is some legislation to forbid employment about mines to children under a specified age. Generally speaking, the minimum age for employment in factories is higher in the western provinces than in the eastern, and the minimum age for employment in mines is higher than that for work in factories.

Not until 1897 was employment in mercantile establishments forbidden to children in any province, and legislation to control this form of juvenile employment has lagged behind factory laws. In 1897 the Ontario legislature declared it unlawful to employ children under ten in retail stores. This age-limit was raised to twelve in 1908. Only in 1921 was the minimum age for employment in shops made the same as that for factories in Ontario, fourteen. Among the provinces at the present time, the law fixes a minimum age for employment in shops in Alberta, Manitoba, Ontario and Quebec only.

(10) The Manitoba Mines Act of 1927 gave the Lieutenant-Governor in Council power to fix a minimum age but no regulations have been made under this authority.

There appears to be little reason for the different standards in factory and mercantile employment for children. Children working about shops are frequently attending school or should be, and those who have made a special study of child labour agree that the work and long hours of shop employment impose too great a strain to permit proper growth and progress at school. Moreover, the jobs they are given are nearly always "blind alley" jobs. The young workers are replaced by others without having had any useful training, and drift into the large classes of unskilled or casual workers who make up most of our unemployed and even in prosperous times have low standards of living.

Employment of children in street trades and places of amusement is also less generally regulated than their employment in industrial undertakings. Only in Ontario is there a direct prohibition, applicable throughout the province, of the employment of children in street trades. In the Prairie Provinces, as in Ontario, children engaged in selling may be apprehended as "neglected" and taken into custody by a Children's Aid Society. Another means of regulation and the first adopted, is the power given to municipal councils in all provinces, except British Columbia and Prince Edward Island, to regulate the employment of children in either or both of these employments. Later legislation of this kind provides for a licensing system for children in street trades.

In each province the law regulating the employment of children is found in several statutes referring to the place and type of employment. There is no statute in any province dealing only with child labour and forbidding employment of any kind below a specified age. In all the provinces there are numerous occupations followed by children which are unregulated. Among these are work about gardens or on farms, construction jobs and domestic work. Only a few provinces control child

labour in hotels, restaurants, offices, in messenger work or in delivery work for dairies, bakeries, etc.

School attendance laws prohibit the employment during school hours of any child who is required by law to attend school. These laws in themselves, however, are not an effective means of regulating child labour since they exercise no control over employment outside school hours or on school holidays, and all except that of British Columbia permit a child to be exempted from attendance for a certain period on the ground of poverty or because of the necessity of maintaining himself or others. Further, there is no school attendance law in Quebec, and that of New Brunswick provides for compulsory attendance only at local option, except in Fredericton, St. John, Newcastle, Chatham, Marysville, Edmunston and Campbellton. Local by-laws requiring attendance, where made, appear to have fallen into abeyance, at least in the rural districts.

Manitoba is the only province that has introduced legislation to limit the hours of employment of children before and after school and in important particulars it does not implement the international convention on this point.

Statistics regarding youthful workers in Canada are not very satisfactory. Table 1, gives the figures of the Census of 1931 for gainfully occupied children from 10 to 14 years of age, 15 years, and 16 to 17 years respectively, province by province. These statistics are not complete regarding street trades, where many children are employed, nor do they include part-time employment or employment on one's own. The proportion of young workers in Quebec is considerably higher than in the other provinces.

Table 2, covers the same ground on an occupational instead of provincial basis. The same limitations apply to the figures in this table as to those in Table 1. The majority of youthful workers are in agriculture, with service, transportation and communication, and manufacturing following in that order.

International Legislation regarding the Minimum Age for Employment.

The International Labour Conference has adopted five Conventions dealing with the minimum age for employment.

They are:

Number 5, 1919, fixing the minimum age for admission of children to industrial employment at fourteen. This convention was revised in 1937, (No. 59), and the minimum age was fixed at fifteen. A higher age was stipulated for admission to employments dangerous to life, health or morals.

Number 7, 1920, fixing the minimum age for admission of children to employment at sea at fourteen. This convention was revised in 1936, (No. 58), and the minimum age was raised to fifteen.

Number 10, 1921, fixing the age for admission of children to employment in agriculture at fourteen, except outside the hours fixed for school attendance.

Number 15, 1921, fixing the minimum age for the admission of young persons to employment at sea as trimmers or stokers at eighteen.

Number 33, 1932, fixing the minimum age for admission of children to non-industrial employment at fourteen. This convention was revised in 1937, (No. 60), and the minimum age fixed at fifteen, with exceptions.

The Dominion Parliament passed legislation implementing the first Convention concerning the age of children ~~working~~ at sea but has not yet taken action about the revised one (1936). The Dominion has also given effect to Convention number 15 regarding trimmers and stokers. It is to be noted, however, that these regulations of the Canada Shipping Act do not apply to inland waters and there is no statutory regulation of the employment of juveniles on lake vessels in Canada. There is no legislation

TABLE 1

GAINFULLY OCCUPIED PERSONS 10 YEARS OF AGE AND OVER, AND AGE GROUPS 10-17 YEARS IN ALL
OCCUPATIONS, CANADA AND THE PROVINCES. CENSUS OF 1931

	All Ages		10 - 14 years		15 years		16 - 17 years	
	Male	Female	Male	Female	Male	Female	Male	Female
Canada	3,261,371	665,859	16,583	2,530	27,412	6,105	118,546	43,667
Prince Edward Island	27,818	4,348	205	32	356	62	1,282	312
Nova Scotia	153,151	27,936	519	125	991	258	5,360	1,822
New Brunswick	117,933	22,072	925	145	1,307	302	5,187	1,475
Quebec	823,287	202,422	9,964	1,572	11,295	3,090	37,473	15,674
Ontario	1,096,726	249,488	2,718	393	6,049	1,347	33,970	15,081
Manitoba	225,764	44,908	879	96	1,918	309	8,255	2,773
Saskatchewan	301,435	37,476	695	67	3,141	294	13,103	2,361
Alberta	252,742	33,461	427	36	1,630	193	8,315	1,755
British Columbia	262,515	43,748	251	64	725	250	5,601	2,414

TABLE 2

GAINFULLY OCCUPIED PERSONS 10 YEARS OF AGE AND OVER, AND AGE GROUPS 10-17 YEARS BY
OCCUPATION IN MAIN INDUSTRY GROUPS. CENSUS OF 1931.

	All Ages		10 - 14 years		15 years		16 - 17 years	
	Male	Female	Male	Female	Male	Female	Male	Female
All Occupations	3,261,371	665,859	16,583	2,530	27,412	6,105	118,546	43,667
Agriculture	1,107,766	24,079	13,370	133	19,933	241	65,245	872
Fishing, Hunting & Trapping	47,408	497	444	4	442	12	1,835	29
Logging	43,995	-	86	-	164	-	1,208	-
Mining and Quarrying	58,585	6	16	-	64	-	870	-
Manufacturing	358,024	84,657	278	293	961	1,012	8,565	7,790
Electric Light & Power	32,453	3	1	-	3	-	98	-
Building & Construction	202,970	96	55	-	199	1	1,972	16
Transportation & Communication	248,598	17,235	784	15	1,734	52	8,400	786
Warehousing & Storage	26,992	8,200	20	31	58	159	859	1,576
Trade	259,799	54,113	370	94	767	361	5,549	3,993
Finance, Insurance	36,252	571	-	-	-	-	-	-
Service	287,625	347,471	207	1,808	395	3,729	2,919	21,747
Clerical	124,139	116,927	90	24	368	195	4,608	4,938
Other (a)	425,408	11,707	857	128	2,307	339	16,313	1,886
Unspecified	1,357	297	5	-	17	4	105	34

(a) Labourers and Unskilled Workers (Not agricultural, mining or logging)

fixing a minimum age for employment on Dominion public works, nor is a condition attached to contracts for supplies to the Dominion government stipulating that no person may be employed below a specified age, as in the Walsh-Healey Act of the United States. It would appear to be necessary to enact legislation prohibiting the employment of children under fifteen years of age in connection with Dominion public works and in inter-provincial transportation by rail, water and air, in order to comply with the International Labour Convention applying to industrial undertakings.

Provincial legislation does not completely comply with any of the International Conventions. There is no statutory minimum age for employment in agriculture in any of the provinces. Non-industrial undertakings are not covered at all in some provinces, while in others only employment in shops and some places of amusement and on the streets is regulated. Manitoba is the only province substantially implementing the Convention as far as shops are concerned and that is by order of the Minimum Wage Board, not by statute. As regards industrial undertakings, the provincial laws governing mines and factories come nearer to meeting the requirements of the Convention. Three provinces, British Columbia, Alberta and Manitoba comply with the minimum age for admittance to factories and several of the provinces meet the requirements for work in and about mines. But there is no legislation, either Dominion or provincial, applying to the operation of railways, vessels on inland waters, work at docks, or to construction or engineering, all of which are included in the term "industrial undertaking". Only in some provinces is there a minimum age established for work in connection with the transport of passengers or goods by road.

Regarding dangerous employment, the international legislation stipulates that the national law implementing the Convention must fix a higher minimum age than fifteen. Most of the provincial Factory Acts enable regulations to be

made by the administrative authorities on this point, but only Quebec has taken steps to make use of the authority thus given by issuing regulations specifying the dangerous occupations. None of the provinces follow the example of England and other industrial countries in requiring young persons to undergo a medical examination before employment in factories and to undergo a periodic medical examination if employed in certain specified processes.

Existing Canadian legislation:

Table 3 indicates the legal minimum age for employment in mines, factories and shops, province by province. The details of this and other legislation are contained in Appendix I. Dominion and provincial laws are there summarized under the following heads: School Attendance, Agriculture, Mines, Factories, Shops, Street Trades, Places of Amusement, Dangerous Occupations. The pertinent statutes are noted at the end of (11) the treatment of each topic.

(11) Legislation fixing a minimum age for occupations requiring skill and judgment or for the protection of others is not dealt with in this memorandum. Such occupations include the work of elevator and hoist operators, moving picture machine operators, stationary and other engineers, drivers of motor vehicles, etc.

TABLE 3.

MINIMUM AGE FOR THE EMPLOYMENT OF CHILDREN IN MINES, FACTORIES, AND SHOPS IN CANADA. (January, 1938).

	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Quebec	New Brunswick	Nova Scotia	Yukon	International Convention
Mines - (1) Metal Mines	15, above ground 18, below ground	- -	14, above ground 16, below ground	(d) (d)	16, above ground 18, below ground	(c) 15, below ground	(c) (c)	16, above ground 16, below ground	12, above ground 12, below ground	15, above ground 15, below ground
(2) Coal Mines	14, above ground 15, below ground	17, above ground 17, below ground	(c) 14, below ground	- -	- -	- -	(c) 16, below ground	16, above ground 16, below ground	- -	15, above ground 15, below ground
Factories	15, except with permit	15	14, boys 15, girls	15	14; 16 from 8 a.m. to 5 p.m. except with permit	14; 16 unless able to read and write fluently or attending night school	(a)	14, except during fruit and vegetable canning season, July-Oct.		15
Shops	(c)	15, in towns of over 5,000 population (b)	(c)	15	As for factories	As for factories	(c)	(c)	(c)	15

- (a) Factories Act, 1937, which is to come into effect on proclamation, fixes minimum age of 15 years.
 (b) Edmonton, Calgary, Medicine Hat, and Lethbridge.
 (c) No Legislation.
 (d) No Regulations.

Chapter 2. Legislation Concerning Hours of Work.

Introduction.

Legislation concerning hours of work is one of the oldest types of labour legislation. Its first impulse was a humanitarian one, as a reaction to the very long working day, ranging up to seventeen and eighteen hours, that existed in the early part of the nineteenth century. Such legislation was opposed by employers on the grounds that it would increase costs of production but it soon became apparent that a more reasonable working day increased the efficiency of the worker and, along with technological improvement, increased rather than curtailed output per worker. Accordingly this type of legislation found support on economic as well as social grounds, and the movement for shorter hours has gone steadily forward.

At the present time, there is a distinct difference between the hours worked by skilled and usually unionized labour on the one hand, and unskilled, unorganized labour on the other. Many skilled workers have obtained a forty or forty-four hour week. The unskilled are an inarticulate group with little political influence and poor bargaining power. It is this group that is particularly benefited by hours' legislation.

The present depression has paradoxically produced what appears to be very advanced legislation in some countries regarding hours of work. Italy, for instance, introduced a compulsory forty-hour week. But the purpose of this legislation was different from that of the traditional hours' legislation; it was to spread employment. The same hourly rates of pay were maintained with the result that the weekly income of the worker became smaller and his standard of living fell. The aim of the traditional hours' legislation is to reduce the physical strain on the worker without lowering his standard of living.

The type of hours' legislation designed to "spread employment" and maintain the same hourly wage rates, may have undesirable social and economic results. To quote one authority:

"arrangements of this type do not increase the total volume of employment, but merely redistribute work and wages over a larger number of workers, substituting under-employment of the whole group for unemployment for a section of it. Their desirability depends upon conditions in the country at the time. If they involve reducing the living standard of a large section of the working class below the minimum necessary for health and efficiency, their effects might be worse than those of the concentration of unemployment upon a smaller number. This is especially true, if relief for them can be provided and financed by levies on higher income or by borrowing. The case for sharing employment would be stronger if the weekly wage, before reduction, were already liberal, and if political or other obstacles made it impracticable to provide an adequate allowance for the wholly unemployed." (12)

It might be added that from the point of view of the business man, under-employment at low wages is likely to mean an inefficient working force and lower production per worker.

International Legislation regarding Hours of Work:

The chief conventions regulating hours of work are as follows:

No. 1, 1919, limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week.

"Industrial undertaking" includes particularly:

- (a) mines and quarries,
- (b) industries in which articles are manufactured altered, cleaned, repaired, etc.,
- (c) construction, reconstruction, maintenance, repair, etc.
- (d) transport of passengers or goods by road, rail, sea or inland waterway, including the handling of goods at docks, etc.

No. 30, 1930, limiting the hours of work in commerce and offices to forty-eight in the week and eight in the day.

No. 31, 1931, regulating hours of work in coal mines. This convention was revised in 1935 as -

(12) E. R. Walker, "Unemployment Policy", p. 87. (1936)

No. 46, 1935, limiting the hours of labour underground in hard coal and lignite mines to seven hours and forty-five minutes per day with no work on Sundays or legal public holidays.

No. 47, 1935, approving of "(a) the principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence; and

(b) the taking or facilitating of such measures as may be judged appropriate to secure this end."

No. 49, 1935, limiting the hours of work in glass-bottle works to not more than forty-two per week and eight a day.

No. 51, 1936, limiting the hours of work on public works of "central governments" to forty a week. As the Provincial governments of Canada were consulted by questionnaire regarding this convention, they are apparently included under the designation "central governments".

No. 57, 1936, regulating the hours of work and manning at sea. The hours are eight a day and forty-eight or fifty-six a week, depending upon the size of the vessel and the type of work.

(13)

Dominion Legislation

Employees of the Dominion Government who were working more than eight hours a day, were given an eight-hour day with a half-holiday on Saturday by an order-in-council of March 27, 1930, (P. C. 670). This was done to bring Dominion legislation in line with the International Labour Convention of 1919 providing for an eight-hour day and a forty-eight hour week but improved somewhat on the weekly standard. A convention of 1935, approving the principle of forty-hour week applied in such a manner as not to reduce standards of living has not

(13) For a more detailed account, see Appendix II.

stimulated any action in Canada.

Public Works and Supplies; The Fair Wages and Hours of Labour Act of 1935, provides for an eight-hour day and a forty-four hour week on Dominion construction work and in any works involving a Dominion grant. An International Labour Convention of 1936 limiting the weekly hours of work on public works undertaken or subsidized by central governments to forty has not been implemented by the Dominion government.

Transportation: The only other legislation of the Dominion Parliament relating to hours of work is a section of the Railway Act which gives power to the Board of Railway Commissioners to limit the hours on duty of any class of railway employees. No action has been taken under this section.

In order to give effect in Canada to the Convention of the International Labour Conference concerning hours of labour in industrial undertakings, legislation would have to be enacted providing for an 8-hour day and a 48-hour week for railway employees as well as for persons employed in the transport of persons or goods by road and inland waterways. As far as railways are concerned there is no apparent reason why Canada should not give statutory recognition to the conditions of the International Convention which permits permanent exceptions for certain classes of labourer and temporary exceptions under specified conditions. Hours of labour of employees of steam railways are governed by collective agreements between the companies and trade unions which provide for a basic 8-hour day, train crews being paid for their mileage on an 8-hour day basis and, in general, all classes of employees receiving time and a half for overtime. In the large car-shops the agreement provides for a standard 44-hour week but in the smaller shops, a 48-hour week. At the present time, a 40-hour week is general.

The 8-hour day and 48-hour week are not the rule in other forms of interprovincial transport, respecting all of which the Dominion could constitutionally implement the Convention.

Session: There is no legislation in Canada limiting hours of work on vessels at sea or on inland waters. This field is within the jurisdiction of the Dominion.

The International Convention regulating hours of work at sea (No.57, 1936), generally speaking limits the daily hours to eight and the weekly hours to forty-eight or fifty-six depending upon the size of the vessel and the type of work.

(14) (15)

Provincial Legislation on Hours of Work

A summary of existing provincial legislation on hours of work may be made under the following headings.

A. Provincial Legislation Dealing Solely with Hours of Work:

Only two provinces, British Columbia and Alberta, have enacted statutes covering hours in a general way. Quebec and Nova Scotia have legislation referring solely to hours but in a restricted way.

1. British Columbia: The Hours of Work Act, 1923, (revised 1934) established an eight-hour day and forty-eight hour week for all workers in industrial undertakings regardless of age and sex. A Board of Industrial Relations has been set up to administer the Act with power to bring other businesses within its scope.

2. Alberta: The Hours of Work Act, 1936, established an eight-hour day and forty-eight-hour week for female workers and a nine-hour day and fifty-four-hour week for males. Farming and domestic service are the only important occupations excluded from the scope of this Act.

3. Quebec: The Act respecting the Limiting of Working Hours, 1933, differs from the legislation of Alberta and British

(14) See Appendix II for the details of the legislation and for historical background.

(15) The regulation of hours for special groups of workers, along with wages and other working conditions, such as is provided for by the Industrial Standards Acts, is dealt with in Chapter 4.

Columbia in two important respects; first, it is in part an unemployment measure as the hope was to distribute employment among more workmen; second, it places the power of limitation in the hands of administrative authorities. The Act gives the Lieutenant-Governor-in Council power to limit the number of hours per day or per week during which a workman may be employed at manual labour, providing only that the maximum hours may never be less than six a day and thirty-three a week. Employers' or workmen's associations, if any, are to be consulted before hours are limited. The Act has been applied only to the building trades in the province and to beauty parlors and shoe repair shops on the Island of Montreal. (See Appendix II for details).

4. Nova Scotia: The Limitation of Hours of Work Act, 1935, proclaimed in effect from June 1, 1937, provides for a board of adjustment with power to determine the maximum working hours in industrial undertakings, including mines and quarries, manufacturing and construction of any kind. It stipulates that all workers in any public or private industrial undertaking must have a weekly rest day and whenever possible it must fall on Sunday. To date, no board of adjustment has been established and no orders limiting hours have been made.

B. Provincial Legislation dealing with Hours of Work as a Part of Working Conditions and in Relation to Specified Industries:

Table 4 shows in summary form the existing legislative standards for the major industries. Appendix II contains the details of this legislation as well as of the international conventions. In addition several other businesses are covered there, namely,

Bake-shops,
Barber-shops and Beauty Parlors,
Hotels and Restaurants,
Transportation.

None of the Canadian provinces has implemented the International Convention establishing a forty-hour week for employees on public works.

Summary of Canadian Legislation Regarding Hours of Work.

Regulation of hours of work falls mainly within the jurisdiction of the provinces, but is in part within the competence of

TABLE 4

PROVINCIAL LEGISLATION CONCERNING HOURS OF WORK, (January, 1938)^(a)

Establishment	British Columbia	Alberta	Saskatchewan
Factories	8-hour day and 48-hour week for male and female workers	8-hour day and 48-hour week for women; 9-hour day and 54-hour week for men.	48-hour week for females, and boys under 16. No daily limit.
Shops	Same as above	Same as above	No legislation
Public Works	Same as above	Same as above	A "fair wage" policy
Offices	No legislation	Same as above	No legislation
Road Transportation	Same as above with more provisions for overtime.	Same as above with more provisions for overtime	No orders issued
Coal Mines (A) Below Ground	8-hour day	8-hour day	8-hour day (unless agreed otherwise).
(B) Above Ground	8-hour day	9-hour day and 54-hour week	8-hour day (unless agreed otherwise).
Metal Mines (A) Below Ground.	8-hour day	9-hour day and 54-hour week	No legislation
(B) Above Ground.	8-hour day	9-hour day and 54-hour week	No legislation

(a) This chart does not cover the regulation of hours for special categories of workers such as is found in the legislation covered in Chapter 4.

TABLE 4 (cont'd)

PROVINCIAL LEGISLATION CONCERNING HOURS OF WORK. (January, 1938) (a)

Establishment	Manitoba	Ontario	Quebec
Factories	9-hour day and 54-hour week for females (b)	10-hour day and 60-hour week for females and boys under 16.	10-hour day and 55-hour week for females and boys under 18.
Shops	No legislation for adults. 48-hour week for children under 14. (c)	Same as above	60-hour week for females and boys under 18 in towns of 10,000 and over. No daily limit.
Public Works	44 to 48-hour week. 54-hour week for teamsters.	8-hour day and 44-hour week.	Minister of Public Works and Labour may determine "fair and reasonable" hours.
Offices	No legislation (d)	No legislation	No legislation
Road Transportation	Driving hours limited to 9 a day and 54 a week.	10-hour day with no weekly provision.	Maximum of 250 miles of driving in any 24-hour period for autobus drivers. No other legislation.
Coal Mines (A) Below Ground. (B) Above Ground.	No coal	No coal	No coal
Metal Mines (A) Below Ground (B) Above Ground.	No orders issued	8-hour day in Northern Ontario	8-hour day and 48-hour week for boys under 18
	No orders issued	No legislation	No legislation

- (a) This chart does not cover the regulation of hours for special categories of workers such as is found in the legislation covered in Chapter 4.
- (b) An order of the Manitoba Minimum Wage Board has established a 9-hour day and 48-hour week for females and boys under 18 in factories.
- (c) An order of the Manitoba Minimum Wage Board fixes a basic 48-hour week for all persons in shops, with punitive overtime pay for work in excess of 48 hours a week. The amount of overtime is limited for all persons and the maximum number of hours for persons under 18 is set at 48 per week.
- (d) An order of the Manitoba Minimum Wage Board fixes an 8-hour day and 44-hour week in Winnipeg, St. Boniface and St. James.

TABLE 4 (Cont'd)

PROVINCIAL LEGISLATION CONCERNING HOURS OF WORK. (January, 1938) (a)

Establishment	New Brunswick	Nova Scotia	International Legislation
Factories	50-hour week for females and boys under 18 under Act of 1937 not yet proclaimed. 10-hour day and 60-hour week for females only, now in force.	No limit	8-hour day and 48-hour week for male and female workers.
Shops	No legislation	No legislation, for adults. Maximum 8-hour day for boys under 14 and girls under 16.	8-hour day and 48-hour week for all workers.
Public Works	A "fair wage" policy	A "fair wage" policy.	40-hour week.
Offices	No legislation	No legislation	8-hour day and 48-hour week for all workers.
Transportation Road.	Driving hours limited to 10 in any 16 consecutive hours.	No orders issued.	8-hour day and 48-hour week.
Coal Mines (A) Below Ground	8-hour day	8-hour day	7 $\frac{3}{4}$ -hour day inclusive
(B) Above Ground	No legislation	No legislation	8-hour day and 48-hour week.
Metal Mines (A) Below Ground.	8-hour day	No limit	8-hour day and 48-hour week
(B) Above Ground.	No legislation	No limit	8-hour day and 48-hour week.

(a) This chart does not cover the regulation of hours for special categories of workers such as is found in the legislation covered in Chapter 4.

THESE RECHERCHES SONT LE FRUIT D'UN TRAVAIL QUI A DURÉ PLUS DE CINQ ANS. ELLES ONT ÉTÉ RÉALISÉES DANS LE CADRE D'UN PROJET DE RECHERCHE FINANÇÉ PAR LE MINISTÈRE DE L'ÉDUCATION ET DE LA RECHERCHE SCIENTIFIQUE.

LES RÉSULTATS PRÉSENTÉS ICI SONT LE FRUIT D'UN TRAVAIL COLLECTIF. JE TIENS À REMERCIER TOUTES LES PERSONNES QUI ONT CONTRIBUÉ À LA RÉALISATION DE CE TRAVAIL, EN PARTICULIER MES COLÈGES ET MES AMIS.

MAINTENANT, JE VEUX PRÉSENTER À VOTRE ATTENTION LES PRINCIPAUX RÉSULTATS DE CE TRAVAIL. VOUS VERRÉZ QUE LES CONCLUSIONS À LAQUELLE JE SUIS ARRIVÉ SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN PREMIER LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN DEUXIÈME LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN TROISIÈME LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN QUATRIÈME LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN CINQUIÈME LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN SIXIÈME LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN SEPTIÈME LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

EN HUITIÈME LIEU, VOUS VERRÉZ QUE LA MÉTHODE QUE J'AI UTILISÉE PERMET D'OBTENIR DES RÉSULTATS PLUS PRÉCIS QUE CEUX OBTENUS PAR LES MÉTHODES TRADITIONNELLES. VOUS VERRÉZ ÉGALEMENT QUE LES RÉSULTATS SONT EN ACCORD AVEC CE QUE D'AUTRES RECHERCHES ONT DÉMONTRÉ.

the Dominion Parliament. Strictly speaking, none of the Dominion Parliament's legislation concerning hours is up to the standard of the International Labour Organization. Persons directly employed by the Dominion government have a maximum eight-hour day and a forty-four hour week which is within the Convention of 1919 establishing an eight-hour day and a forty-eight hour week but is not within the Convention of 1935 approving of the principle of a forty-hour week. For public works, the Dominion government has established a forty-four hour week whereas the Convention of 1936 calls for a forty-hour week. For seamen and workers in interprovincial transportation, there is no statutory limitation of hours at all, whereas generally speaking international legislation stipulates an eight-hour day and a forty-eight hour week.

Turning to provincial legislation, we find no two provinces alike. The gaps and lack of uniformity in provincial legislation for the industries shown in Table 4 also occur in other businesses. (See Appendix II) On the whole, the Maritimes have the least legislation concerning hours, and British Columbia is the only province which, with respect to several main types of business, has implemented the international legislation. It is interesting to note that as far back as 1921, British Columbia passed an act implementing the International Convention of 1919 establishing an eight-hour day and a forty-eight hour week but provided that this statute would not come into operation until other provinces had enacted similar legislation. Seventeen years later, not a single other province had followed her lead. The Canadian competition British Columbia chiefly feared in industrial undertakings was from Quebec and Ontario, which have respectively a statutory fifty-five and sixty-hour week for females only. In the meantime, British Columbia has gone ahead without the co-operation of the other provinces, but her business men still complain that they are put at an unfair competitive disadvantage by such action.

Chapter 3. The Regulation of Wages: Legislation for Minimum Wages

Historical Note

Legislation for minimum wages had its birth in New Zealand and Australia. Two approaches to the problem developed there.⁽¹⁶⁾ Some Australian states and the Commonwealth followed the example of New Zealand (1894) in introducing compulsory arbitration. As it was soon found that the problem of wages was central to industrial peace, the arbitration courts became involved in the fixing of wage-rates. The other approach did not involve compulsory arbitration. The state of Victoria passed a minimum wage law in 1896 to prevent "sweating", that is the paying of wages that are so low as to mean poverty (as defined in footnote 20) for the workers. This law provided for the appointment of wage boards in certain low wage industries to fix minimum wages. The statute was bitterly opposed by employers under the leadership of the Victoria Chamber of Manufacturers who "alleged first, that all work would be driven out of the country; secondly, that only the best workers would be employed; and thirdly, that it would be impossible to enforce such provisions at all....."⁽¹⁷⁾ This statute was for the duration of four years only, because it was regarded as an experiment but in 1900 it was renewed and extended to other industries. This process has gone on until "the wage-board system is regarded no longer as an emergency measure intended to secure a living wage where conditions are

(16) For an account of this development see E. M. Burns, "Wages and the State: a Comparative Study of the Problems of State Wage Regulation", 1926.

(17) Sir Alexander Peacock, later Minister of Labour in Victoria, as quoted by Hammond, M.B. "The Minimum Wage in Great Britain and Australia", Annals of the American Academy of Political and Social Science, July 1913, p. 28.

exceptionally bad, but as a satisfactory method of fixing the
standard wage in any trade"⁽¹⁸⁾.

The example of the state of Victoria is the one that was followed in Great Britain, the United States, Canada and most other countries. Here, the approach was a direct concern with low wages as such. It was considered undesirable public policy to allow wages to be paid that meant chronic poverty for the workers and their families. It was felt that these conditions were not a reflection of the capacity of the industries concerned to pay but rather of a one-sided bargaining situation that put the workers at a disadvantage. From the point of view of the employers, it was felt that unregulated conditions allowed certain unscrupulous employers to take advantage of the ignorance, lack of organization and over-⁽¹⁹⁾supply of labour to set wages at levels lower than the other employers would have been willing to pay, and that consequently minimum wage legislation protected the good employer and prevented competition at the expense of the worker. It was also argued that minimum wages would raise the efficiency of the worker in most kinds of industry and would not mean increased costs for the employer in the long run.

The aim of this type of legislation for minimum wages was, therefore, to provide a "bottom" for the structure of wages to prevent labour from deteriorating physically and perhaps in other ways. It did not purport to establish standards in wages. Generally speaking, this bottom is supposed

(18) Commons and Andrews, Principles of Labor Legislation, p. 49.

(19) It is usually in industries characterized by these conditions that "sweating" is found.

(20)

to be established at a bare subsistence level for a family of

(20) Studies regarding standards of living have classified the various levels of living for workers in our industrial society according to the following categories:

(a) Poverty level -

Those whose incomes do not cover the bare necessities of living. They are on relief periodically, are unable to pay doctors' bills, have the highest rate of infant mortality, etc. During the periods of "normal business activity" P.H.Nystrom ("Economic Principles of Consumption", p.284 seq.) estimates that "at least 7,000,000 to 8,000,000" Americans live at this level.

(b) Bare subsistence level -

Those whose incomes will just cover the physical necessities of living (food, fuel, clothing and shelter) with a strict watch over expenditures. P.H.Nystrom estimates that about 12,000,000 people are in this group in the United States "under normal business conditions".

(c) Minimum for health & efficiency level -

Those whose incomes cover everything essential for health and efficiency if carefully handled. It has been called the "lowest standard consistent with American ideals". It allows for small but diversified miscellaneous expenditures on such things as education, funeral insurance, church, lodge, labour organization and recreation but it does not cover expenses such as a major illness. Under the economic conditions of 1927-28 Nystrom estimates about 20,000,000 Americans living under this standard.

(d) Minimum-comfort level or Minimum for health & decency -

Those whose incomes provide a greater variety in the necessities of living plus adequate housing, insurance, and medical care. Some savings are possible for the careful planner. Most of the children complete the public schools and a considerable proportion attend high school for a year or two at least. Nystrom estimates about 30,000,000 Americans living at this standard in 1927-28.

These are the workers' levels of living except for some skilled workers who may achieve a higher standard in good times.

four to five in male minimum wage legislation and for a single
(21)
person in female minimum wage legislation.

In Canada, however, these principles have been only vaguely followed. Few provinces have made an attempt to determine what the cost of living for workers actually is and no provision has been made for changes in minimum rates according to changes in cost of living, such as exist in Australia; nor have studies been made of the capacity of low-wage industries to pay more adequate wages. Thus one finds minimum rates of wages established in one province for men (and presumably their families) which are lower in some categories than the rates established in an adjoining province for single women.

Legislation for Minimum Wages.

State intervention for the regulation of wages developed quite late in Canada in comparison with other parts of the British Commonwealth of Nations. It tended to follow the example of the American states. Massachusetts enacted the first minimum wage law in North America in 1912, a non-mandatory statute. Its scope was restricted to women and girls and in this respect it was followed by all the early legislation in Canada.

The Canadian legislation of this type was introduced
(22)
as follows:

1918, Manitoba and British Columbia;
1919, Quebec and Saskatchewan;
1920, Alberta, Nova Scotia and Ontario;
1930, New Brunswick.

(21) There is always considerable agitation for the same rates of pay for men and women on the grounds chiefly that lower minimum rates for women are discriminatory to men both in excluding them from certain occupations and in lowering the level of male minimum wages. Another objection is that many female workers have dependents and cannot exist except at a poverty level on a female minimum rate calculated on the basis of one person. It is to be noted that Article 427 of the Treaty of Peace, which the Dominion of Canada signed, lays down the principle that men and women should receive equal remuneration for work of equal value.

(22) The Nova Scotia Minimum Wage Act was proclaimed in force May 1, 1924, but a board was not appointed to administer it until March, 1930. In Quebec a board was established in July 1925 to administer the the Act. The New Brunswick Act has not been proclaimed.

There is no minimum wage legislation in Prince Edward Island, a non-industrial province, except an amendment of 1936 in the Charlottetown Incorporation Act enabling a by-law to be made fixing a minimum hourly rate of thirty-five cents for any workman employed in the city on work done by a contractor or of the kind usually done by contractors. A by-law under this clause was passed on May 14, 1936.

The Minimum Wage Acts in all the provinces but New Brunswick have been amended to broaden their application. None of the minimum wage laws fixes a flat rate of wages. Each statute provides for an administrative body to inquire into conditions and determine the minimum wage for any class of workers within its scope. (23)

The chief differences and similarities between the various provincial statutes at the present time may be summarized under the following headings:-

1. Application to male workers.

All the provinces but Nova Scotia have provided for the establishment of minimum rates of wages for male workers. (24)

The New Brunswick Fair Wage Act, 1936, which was largely a measure for enquiring into grievances and disputes, provided for fixing minimum wages for both men and women but no general orders have yet been issued under it. The provisions of this statute have been incorporated in the Labour and Industrial Relations Act of 1938. As the old Minimum Wage Act applying only to women was never proclaimed in force there has actually been very little done to establish minimum rates of wages in New Brunswick. The Forest Operations Commission has statutory power to fix minimum wages for persons employed in lumbering and has issued some orders.

(23) For a review of these administrative bodies see Appendix III.

(24) As already indicated, Prince Edward Island has no legislation regarding minimum wages and consequently no further mention will be made of that province.

The Quebec Fair Wage Act of 1937 applies to all employees, except farm labourers, domestic servants in private houses and those to whom a collective agreement under the (25) Collective Labour Agreements Act applies. The Fair Wage Board gazetted a general order (Order 4) on April 30, 1938, to be in effect from May 15, 1938, until March 31, 1939, fixing minimum wages for most categories of work within the scope of the Act in cities and towns. Subsequent orders are to fix minimum rates for some classes of workers temporarily covered by Order 4. To date Order numbers 5 to 9 have been issued covering respectively, the silk textile industry, stationary engineers on the Island of Montreal, workers in the leather industry making shoe-counters, cotton textile workers employed in the Dominion Textile Company, Montreal Cottons Company, Ltd. and the Drummondville Cotton Company, and teachers in the City of Verdun. In rural districts, Order 1, 2, 3, of the Fair Wage Board re-applies the orders of the former Women's Minimum Wage Commission to women, and to men performing the same duties as women, in industrial establishments and in retail and whole-sale stores.

Under Order 4, the rates vary with the size of the town and in most cases weekly, monthly and yearly rates vary according as the hours per week are 48, 54 or 60. Minimum hourly rates range from 10 cents an hour for messengers to 40 cents for motor mechanics in Montreal. In industrial and commercial establishments on a 48-hour week, the minimum weekly rate varies from \$5.75 for the lowest paid class in small towns to \$12.50 for the highest paid class in Montreal.

(25) An amendment to the Fair Wage Act made in 1938 (Bill No. 20) provides that no ordinance under the Act shall apply to the province or any of its services unless expressly stipulated, or to any work performed by a third party for the province where the contract provides for a scale of minimum wages. As an ordinance under the Fair Wage Act does not prevent the paying of higher wages than the stipulated minima, this amendment appears to reserve the right to the government of paying lower wages than those specified by the Fair Wage Board.

Quebec has, like New Brunswick, an Act relating to forest operations. Orders have been issued under this Act establishing minimum wages and regulating working conditions.

Minimum wage legislation in Ontario was revised and consolidated in 1937 and the new Act applies to both men and women. To date, no general order has been issued by the Industry and Labour Board. In the meantime, the old regulations for minimum wages remain in force, the rates ranging from \$12.50 a week (in Toronto) to \$10.00 (in rural municipalities) for "experienced" female workers. No male workers may be employed in the same class of employment as female workers at less than the rate of female minimum wages. A temporary order for the textile industry was announced on January 28, 1938, to go into effect on March 1. Weekly wages range from \$16 for adult male workers and \$12.50 for adult female workers down to \$11 for boys under 17 and \$9 for girls under 17 for a basic 48-hour week.

Manitoba and Saskatchewan have extended their female minimum wage acts to men. British Columbia and Alberta have enacted separate male minimum wage acts to supplement the legislation for women. All these provinces have issued orders fixing minimum rates for male workers.

Table 5 shows the weekly minimum wage rates in the various provinces for experienced workers.

2. Geographical Scope.

In every province minimum wage orders apply or may apply to all parts of the province. In the three Prairie Provinces, the original statutes applied only to cities, but under existing legislation orders apply to the whole province (26) in Alberta unless expressly restricted, and in Manitoba and Saskatchewan they may be extended to other parts of the province by Order-in-Council on recommendation of the Minimum Wage Board.

(26) The latest regulations (November 29, 1937) applying to female workers are comprehensive in coverage and apply to all parts of the Province except for workers in telephone exchanges in towns and villages with a population of less than six hundred.

TABLE 5

WEEKLY MINIMUM WAGE RATES IN THE CANADIAN PROVINCES FOR EXPERIENCED WORKERS (JANUARY 1938) (a) (b)

Type of Establishment	Sex	BRITISH COLUMBIA	ALBERTA	SASKATCHEWAN	MANITOBA
Factories	F	\$14.00	\$12.50	\$13.00 cities and a radius of five miles therefrom.	\$12.00 in cities and summer resorts. \$10.00 rural.
	M	\$16.80 to \$19.20	\$14.00	As above.	As above.
Shops and Commercial Establishments	F	\$12.75	\$12.50	\$14.00 cities and a radius of five miles therefrom.	\$12.00 departmental stores and mail order houses in cities. \$10.00 retail stores and wholesale establishments in Greater Winnipeg water district and summer resorts. \$10.00 rural.
	M	\$15.00	\$14.00	As above.	As above.
Offices	F	\$15.00	\$14.00	No orders.	\$12.50 Winnipeg, St. James, and St. Boniface.
	M	(c)	\$14.00	No orders.	No orders.
Hotels and Restaurants	F	\$14.00	\$12.50	\$12.00; \$10.00 Kitchen help; \$8.00 Bellboys, etc.	\$12.00 or 25¢ per hour in cities and summer resorts. \$9.60 or 20¢ per hour in rural areas
	M	(c)	\$14.00	As above.	As above for cities and summer resorts. \$10.00 or 21¢ per hour in rural areas.

- (a) Some recent orders fix hourly instead of weekly rates but they specify a maximum working week beyond which overtime must be paid. In these cases, the figures in the chart are for the basic working week.
- (b) The New Brunswick Minimum Wage Act of 1930 has not been proclaimed.
- (c) No orders regarding males have been issued. The Female Minimum Wage provides that no male shall receive less than female rates in work usually done by females.

TABLE 5 (Cont'd)

(a) (b)
WEEKLY MINIMUM WAGE RATES IN THE CANADIAN PROVINCES FOR EXPERIENCED WORKERS (JANUARY 1938)

Type of Establishment	Sex	ONTARIO	QUEBEC	(d)	NOVA SCOTIA
Factories	F	\$12.50 Toronto. \$11.50 population of 50,000 and over. \$11.00 population of 5,000 to 50,000. \$10.00 rest of province.	\$12.50 in Zone I, City and Island of Montreal and a radius of 15 miles. \$11.50 in Zone II, Quebec and cities and towns of 10,000 or over. \$10.50 in Zone III, towns 2,000 to 10,000. \$9.60 in Zone IV, other towns.		\$11.00 towns of 17,000 and over. \$10.00 other towns.
Shops and Commercial Establishments	F	M Orders pending \$12.50 Toronto. \$12.00 Ottawa, Hamilton, London, Windsor. \$11.00 population 10,000 to 50,000. \$10.00 population 4,000 to 10,000. \$9.00 population 1,000 to 4,000. \$8.00 rest of province.	Same as for industrial establishments.	As above.	No legislation. \$11.00 towns of 17,000 and over. \$10.00 other towns.
Offices	F	M Orders pending As for shops	As above. \$12.00 in Zone I. \$10.80 in Zone II. \$9.60 in Zone III. \$7.25 in Zone IV.	As above.	No legislation. \$11.00 towns of 17,000 and over. \$10.00 other towns.
Hotels and Restaurants	F	M No orders 26¢ per hour, Toronto. 25¢ per hour, Ottawa, Hamilton, London and Windsor. 22¢ per hour where population 10,000-50,000. 20¢ per hour where population 4,000-10,000.	As above. (cooks: 30¢ an hour in Zone I. 25¢ in Zone II. 15¢ in Zone III. Kitchen Help: 25¢(I); 20¢(II); 14¢(III); 12¢(IV). Waiters, chambermaids, elevator operators, etc., 20¢(I); 16¢(II); 13¢(III); 10¢(IV). Bellboys, doorkeepers: 10¢ (all Zones)	As above.	No legislation. \$11.00 towns of 17,000 and over. \$10.00 other towns.
	M	No orders	As above.	As above.	No legislation.

(d) These rates came into force on May 15th, 1938. In Quebec, rates are not fixed according to experience. At least 65% of the workers in a plant must receive the rates indicated here. Lower rates are fixed for 25%, and still lower for not more than 15%.

(e) Hotels with 50-100 rooms in Zones III and IV must pay rates for Zone II; in taverns, waiters have a minimum rate of 25¢.



3. Industrial Scope

The legislation of British Columbia, Alberta, Ontario, Quebec, New Brunswick and Nova Scotia applies to all industries except agriculture and domestic service. In Manitoba, the Minimum Wage Act does not apply directly to all industries, but, by Order-in-Council, may be extended to all. (27) In Saskatchewan, the Act is restricted to shops and factories but these terms are broadly defined.

4. Hours of Labour

Aside from legislation dealing in a general way with hours of work, (28) statutes fixing minimum wages give the administering bodies they set up some power with respect to hours. This is to forestall a type of evasion of minimum wages which would penalize employees by increasing hours of work without increasing the weekly wage rate.

In British Columbia, Saskatchewan, and Manitoba, the Minimum Wage Acts empower the Boards to limit hours absolutely, but except in Manitoba this power is not being used.

In British Columbia, the Female Minimum Wage Act still gives the Board power to fix maximum hours, presumably because the Hours of Work Act does not cover some occupations in which female workers are employed.

In Alberta, similar sections of the Female Minimum Wage Act were repealed when the Hours of Work Act was passed on the grounds that they were no longer necessary. (29)

(27) In Manitoba, the Fair Wage Act, 1916, applying to public works, was amended in 1934 to cover private construction work of over \$100 value in Greater Winnipeg or in any town of over 2,000 people or in any part of the province to which the Act is extended by Order-in-Council. In 1938, it was amended further to add barber and beauty shops, printing, engraving and dry-cleaning, and to enable the Lieutenant-Governor in Council to apply the special provisions relating to these places to any other industry not covered by the Act.

(28) See Chapter II on Hours of Work.

(29) It will be recalled that Alberta and British Columbia are the only provinces having statutes limiting the hours of work generally. In British Columbia an eight-hour day and 48-hour week has been established for both men and women, and in Alberta, similar hours for women and a nine-hour day and 54-hour week for men.

In Manitoba, work is usually limited to 48 hours in a week by minimum wage orders.

In Saskatchewan, hours are no longer limited absolutely by minimum wage orders but the maximum hours for which the minimum wage must be paid are 48 a week, ⁽³⁰⁾ and the orders of October 18, 1937, stipulate that the full minimum must also be paid to all those working between 43 and 48 hours a week.

In Ontario, the only province, except Prince Edward Island and Nova Scotia, in which there is no statutory power to limit hours of work of all persons employed in industrial and commercial establishments, the maximum hours to which the minimum wage applies vary with the size of the municipality. In municipalities with a population of more than 50,000, a maximum week of 48 hours has been fixed unless the regular working week of the establishment is less. In municipalities of between 10,000 and 50,000 population, a week of 50 hours is fixed (unless the regular working week is less); and for all other municipalities, a maximum week of 54 hours.

In Quebec, the Fair Wage Board has fixed minimum weekly rates for a week of 48 hours, 54 hours and 60 hours. In retail stores, the rate applies to a 54-hour week and in offices to a 48-hour week except where the office is connected with an industrial or commercial establishment. Working hours for males are limited to 72 in a week.

In Nova Scotia, the usual provision is that the maximum hours for which the minimum rates are payable shall not be less than 44 nor more than 50 per week. In offices and beauty parlours the rates apply to 48 hours.

(30) Except for elevator operators, bell-boys and porters in hotels, whose minimum wage applies to a 60-hour week.

5. Overtime.

In Nova Scotia and Ontario the administrative boards cannot set an absolute limit to the number of hours in the working week, but they can specify the number of hours to which the minimum wage applies and require extra pay for any hours work in excess of those specified hours.

In New Brunswick, no general orders have been issued under the Fair Wage Act of 1936 or the Labour and Industrial Relations Act of 1938.

In Nova Scotia, overtime has to be paid after fifty hours at the same hourly rate as for the 50-hour week.

In Quebec, overtime (after the specified 48, 54 or 60 hours a week, as the case may be) must be paid at the rate of one and a half times the minimum hourly rate to every worker earning less than \$30 a week in Zone I, \$25 a week in Zones II and III, and \$20 in Zone IV. Time and a half must also be paid where an employee works more than ten hours in any one day provided he is not employed longer than the weekly limit (in which case the general rule regarding overtime just mentioned has application) or after twelve hours in a day in any case. Other exceptions to the regulation of overtime are made where the wage is 15% above the legal minimum or where holidays are given.

In Ontario, payment for overtime must be not less than at an hourly rate equal to one-fortieth of the minimum wage.

In Saskatchewan, overtime is at the rate of 30 cents an hour for experienced workers and 25 cents an hour for inexperienced.

In Manitoba, when permits for overtime are issued, the overtime hours are paid at a rate proportionate to the minimum wage for the maximum regular hours.

In Alberta, the Female Minimum Wage Act empowers the Board to fix rates for hours worked in excess of the Hours of Work Act at not more than time and a half. Under the orders of

November 29, 1937, overtime at the rate of one and one-half times the regular hourly rate must be paid for any hours in excess of nine a day or forty-eight a week. The Male Minimum Wage Act gives the Board similar authority for men and a recent regulation fixes the rate at time and a half.

In British Columbia, orders issued under the Male and Female Minimum Wage Acts require that hours worked in excess of the Hours of Work Act be paid at a rate of about time and a half, and in a few cases double the regular rate.

(30a)

6. Part-time and short-time

When the first minimum wage laws were passed, business was good and there was accordingly little concern as to persons on short-time or part-time. In all provinces they were paid an hourly rate based on the minimum wage for a full week. But the minimum weekly rates were determined on a minimum of subsistence basis, and when the working hours of an establishment were reduced or workers were taken on for part-time only, the weekly wage tended to fall below the subsistence level in spite of a lower cost of living. This was the situation in many cases after the decline in business beginning with the autumn of 1929. It was brought forcibly to the attention of authorities because often the weekly wages of part-time and even fully employed workers were so low as to require supplementing by relief and charitable agencies. Consequently the feeling has been growing that where a business is so organized as to require workers on what might be called "under-time", a punitive rate should be required just as with overtime. It is increasingly felt that business should, in some measure at any rate, face the social problem caused by part-time workers employed at wages insufficient to support a minimum of subsistence level of living.

(30a) This section is not concerned with the part-time work of incapacitated workers which is a special problem and which is insignificant compared to the total amount of part-time work.

In all the provinces the Minimum Wage Boards now have power to fix special rates for part-time workers. In Nova Scotia, the hourly rate is substantially the same as for the regular working day but in the other provinces it is higher, although to varying degrees. Alberta and British Columbia require that any person called to work must be paid for at least four hours in a day, Quebec, for three hours, while Saskatchewan stipulates two hours. In New Brunswick, the Board was first given this power by the legislation of 1938 and it has not issued any regulations as yet. The details of these regulations will be found in Appendix III.

7. Apprentices and Learners

Under the Minimum Wage Acts of all the provinces the administrative body has power to fix lower rates for inexperienced workers or for persons under eighteen years of age. In establishing the rates for these classes, the Boards have, in all cases, provided for a learning period during which, at specified intervals, the minimum rate increases until it reaches the rate for an experienced worker. The length of the learning period varies with the nature of the work and varies somewhat as between provinces. The problem, a difficult one, is to provide for a long enough learning period without providing the employer with underpaid labour, and to avoid possibilities of evading the minimum wage which the practice of a "learning period" opens up. As a further protection, the Boards are authorized to limit the proportion of apprentices, learners or inexperienced workers that may be employed in any establishment. This proportion is not standardized as between the provinces and ranges from about 15 to 40%, although the present order regarding factories in Ontario appears to place no limitation on the number of inexperienced workers. Details will be found in Appendix III.

8. Recovery of Wages.

At the present time, all the minimum wage laws, except the Fair Wage Act, 1937, of Quebec, provide that if an employer pay an employee less than the minimum wage, he may be prosecuted and, if convicted, he shall be ordered by the magistrate to pay the amount of wages due. In Ontario, such wages are payable to the Board on behalf of the employee; in the other provinces to the employee. In British Columbia and New Brunswick the statutes stipulate that in addition to any other remedy a worker paid less than the minimum wage may take civil proceedings for the balance due. In Quebec, civil proceedings must be taken by the employee under the Fair Wage Act, 1937.

In all the provinces, however, the minimum wage authorities appear to have assumed the task of collecting or directing the payment of arrears of wages in cases brought to their attention where no proceedings are instituted against the employer. There is definite need, however, for a general wage-collection act in each province to give the worker better protection in this respect.

Enforcement of Legislation.

Measures to ensure the observance of minimum wage orders have been gradually made more uniform throughout the provinces. They include requiring employers to keep records of their employees with respect to ages, hours worked and wages paid; making provision for inspection and for the posting of orders where they can easily be read by the employees; protecting workers who make complaints or give evidence as to conditions by making dismissal or any other discrimination against them unlawful; and imposing penalties for violations. The question of proof is always a difficult one and there have been consistent complaints from workers that inspection is not thorough enough to catch many violations and that the employee is not in a

$\frac{d}{dt} \left(\frac{1}{\rho} \right) = - \frac{1}{\rho^2} \frac{d\rho}{dt}$

[illegible]

position to complain because he will in fact generally be discriminated against by the employer if he does. The whole question of evasions of minimum wage legislation was investigated by the Price Spreads Commission, 1935, and it was found that evasions were quite widespread.⁽³¹⁾ Similar evidence regarding the textile industry was given before the Royal Commission on that industry in 1937.

The provinces vary in provision for inspection. In Alberta, British Columbia and Manitoba inspectors are provided for the specific purpose of enforcing the minimum wages. In Saskatchewan and Ontario, inspectors already appointed under other legislation are given the additional task of enforcing minimum wages. Quebec is the only province providing for a levy on the employers, a maximum of 1% of the payroll,⁽³²⁾ to assist in meeting the cost of enforcing the Act.

Note on the Fixing of Minimum Wages

When minimum wages are intended to keep wages up to at least a subsistence level, they should be based on careful cost of living studies and should be changed periodically according to changes in the cost of living. Canada has been rather backward in making such studies. The budget of the Dominion Department of Labour is designed to measure changes in the cost of living and is not intended to indicate what a minimum budget for workers ought to be. The Minimum Wage Board of the Province of Ontario used to publish a budget on which the minimum wage for female workers was based. The last one published was in the Thirteenth Annual Report of the Minimum Wage Board of the Province of Ontario, 1933, page 8. It was designed to cover

(31) Report of the Royal Commission on Price Spreads, c. V and annexes.

(32) A by-law under the Fair Wage Act has established the levy at $\frac{1}{2}$ of 1% of the payroll.

"the least sum upon which a working woman can be expected to support herself" in the city of Toronto. The budget amounted (33) (34) to \$12.50 a week, divided as follows:

Clothing per week	\$2.21
Sundries per week	3.29
Board & lodging per week	7.00

The budget assumed 52 weeks of work per year which gave a total annual income of \$650. The female minimum wage of Ontario has not been changed since 1933 to cover the increased cost of (35) living that has taken place.

It can be seen by a glance at Table 5 that if \$12.50 a week for 52 weeks is the "least sum" upon which a working woman can support herself under urban conditions in Canada, the minimum wage schedules purporting to cover the male worker and his family can hardly be even at a bare subsistence level.

(33) Other estimates of a minimum "living wage" for a self-supporting woman are: \$15 by the Consumers' League of New York City (1919); \$16.50 by the District of Columbia Minimum Wage Commission (1919); \$17.20 by the Colorado Industrial Commission (1930); \$15. by the Y.W.C.A. (1930) for Boston, \$20. for Chicago, \$16. for Kansas City, \$9.96 for New Orleans and \$21. for Philadelphia. A working girl's budget was published in 1938 by the minimum wage division of the New York State Labour Department. It is called "a self-support budget for a woman who is a self-supporting member of a modern community" and it is based on a careful survey of all classes of working women in New York State. It calls for a minimum "self-support" wage of \$20 a week for a girl living at home and \$23 a week for a girl not living at home. This wage assumes 52 weeks of employment a year.

(34) The details of this budget are given in Appendix III.

(35) The cost of living index of the Dominion Department of Labour has changed as follows: (Labour Gazette, December 1937, p. 1401)

	Low month		High month
1933	120 (June)	to 123	(December)
1934	122 (June)	to 126	(March)
1935	123 (June)	to 127	(December)
1936	125 (June)	to 128	(December)
1937	129 (January)	to 133	(November)

This is especially true when industry is not operating at peak capacity and many workers do not have full employment throughout the year, but even in "normal" times an important proportion of the working class are unable to provide themselves even with adequate nutrition. A growing body of research in this field, including that of Sir John Orr, McGonigle and Kirby, and Eleanor Rathbone (Great Britain); Margaret Stecker and Stiebeling and Ward (United States); and the League of Nations; indicates that malnutrition is even more serious than was generally supposed, affecting up to 25% of the population. These facts argue in favour of either a higher level of minimum wages or a programme of social insurance to protect the worker or both. (36)

(37)

Paul Nystrom arrived at the following approximate expenditures required to support various standards of living under urban conditions in the United States for the year 1929:

Table 6

Approximate Expenditures Required to Support
Various Standards of Living under Urban
Conditions in the United States
(Costs and Dollar Values as of 1929) (38)

<u>Standards of Living</u>	<u>Single Worker</u>	<u>Man & Wife</u>	<u>Man, Wife and one Child</u>	<u>Man, Wife and two Children</u>	<u>Man, Wife and three Children</u>
Bare sub- sistence	\$ 600	900	1,200	1,500	1,800
Minimum for health and efficiency	800	1,200	1,500	1,800	2,100
Minimum- comfort	1,000	1,500	1,800	2,100	2,400

(36) The relationship between wages and social insurance is dealt with in Public Assistance and Social Insurance by A. E. Grauer.

(37) Economics of Consumption, 1929, p. 302.

(38) The year 1938 would, of course, be characterized by cheaper cost of living and consequently lower wage rates but the writer is interested here in the relative cost of maintaining dependents.

If the relative cost of dependents in Canada is anything like these figures, minimum wage legislation in Canada does not face the problem of the working man with a family.

International Legislation.

Convention No.26, 1928, deals with the creation of minimum wage-fixing machinery, in "trades or parts of trades (and in particular in home-working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low". "Trades" includes manufacture and commerce.

Recommendation No.30, 1928, draws up principles and rules to be used in setting up such minimum wage fixing machinery. Chief among these are,-

1. The necessity of preliminary investigation before rates are set. In this investigation both employees and employers should be heard.
2. Representatives of employers and workers chosen by themselves should be associated in the drawing up and administering of minimum rates to "secure greater authority" for the rates. Duly qualified independent persons should also be associated with the wage-fixing body.
3. The determination of the wages should take into account a "suitable standard of living" for the workers. "For this purpose regard should primarily be had to the rates of wages being paid for similar work in trades where the workers are adequately organized and have concluded effective collective agreements, or, if no such standard of reference is available in the circumstances, to the general level of wages prevailing in the country or in the particular locality."
4. The conference calls the attention of the governments to Article 427 of the Peace Treaty which lays down the principle that men and women should receive equal remuneration for work of equal value.

In Canada most of the provinces started with provisions substantially in accordance with principle 2 above but now outside of a few provinces this situation can no longer be said to exist.

References.

1. Prince Edward Island - Charlottetown Incorporation Act, 1936, c.31. By-law, May 14, 1936.
2. Nova Scotia - Minimum Wage for Women Act, 1920, c.11; 1924, c.57; 1931, c.57.
3. New Brunswick - Minimum Wage Act, 1930, c.11 (not proclaimed).
Fair Wage Act, 1936, c.51; 1937, c.39.
Labour and Industrial Relations Act. 1938.
4. Quebec - Fair Wage Act, 1937, c.50. Bill No.20. 1938.
5. Ontario - Minimum Wage Act, 1937, c.43.
6. Manitoba - Minimum Wage Act, C.A. 1924, c.128; 1925, c.35; 1931, c.35; 1933, c.26; 1934, c.29; 1935, c.29; Fair Wage Act, 1938, c.15.
7. Saskatchewan - Minimum Wage Act, 1936, c.115; 1937, c.88.
8. Alberta - Minimum Wage Act, 1925, c.23; 1930, c.26; 1936, c.77; 1936 (2nd sess.) c.6.
Male Minimum Wage Act, 1936, c.76; 1936, (2nd sess.) c.7; 1938, c.58.
9. British Columbia - Female Minimum Wage Act, R.S. 1936, c.191.
Male Minimum Wage Act, R.S.1936, c.190.

Chapter 4. The Regulation of Wages - Legislation Making Legally Binding Certain Agreed Conditions as to Wages and Hours of Labour in Quebec, Ontario, Alberta, Nova Scotia and Saskatchewan.

Introduction

Legislation providing for the extension of collective agreements to all or a part of an industry by law was introduced by Western Australia (1912), Queensland (1916), Germany (1918), Austria (1919), South Africa (1924), and New Zealand (1925).^{(39) (40)} Ordinarily, many employers are kept from entering into collective agreements by the knowledge that some competitors will not do so and will underbid for labour and undercut prices once the agreement is announced. This is a constant cause of labour trouble. The purpose of this kind of legislation is to bring about industrial peace by extending collective agreements drawn up by representatives of employers and trade unions to a whole industry or competitive area. It is considered that employers as a class gain through a marked reduction of industrial stoppages and greater efficiency from a better satisfied working force, while employees as a class gain through better conditions and greater stability of working terms. It is believed that this type of legislation helps prevent competition at the expense of the worker and shifts it to the achievement of industrial efficiency.

The only English legislation of this type is significant because it is an attempt to maintain standards under conditions where a whole industry is in a depressed state. An Act of 1934 provides for the legal extension of the wage-rates fixed in a collective agreement throughout the cotton weaving industry in specified districts. The market for English cotton goods had been depressed for some years, and the resulting sharp competition for a limited market broke down wage-rates and other

(39) For a discussion of this legislation see Margaret Mackintosh, "Legislation Concerning Collective Labour Agreements," Canadian Bar Review, Vol.14, No.2, 1936.

(40) South Africa and (at the time) Germany, although federally organized, placed jurisdiction in the hands of the central government.

working conditions and caused many violations of collective agreements. Both employers and trade unions requested legislative action under these conditions. On second reading, the (41) Minister of Labour stated:

"The question before the industry now is how to secure that the whole principle of collective bargaining does not break down. The great majority of the employers are anxious to honour agreements. The payment of lower wages where that has taken place, I am advised, has not resulted in the sale of a single extra yard of cloth anywhere. It merely means that employers who are faithful to the agreements, and wish to keep them, find themselves unable to compete with those employers who either have not been parties to the agreements, or, if they have, have broken away from them."

Minimum wage legislation implies government intervention either in directly fixing the wage rates or in bringing together representatives of employers and employees in an industry to reach an agreement as to the rates to be fixed by the government.

The essence of a collective agreement is the voluntary nature of the bargain and of the subsequent agreement between employers and freely organized trade unions. Except where action is deemed necessary to protect the workers' interests (e.g. current legislation in the United States), there is no governmental intervention at any point. In most countries there is now legislation giving some legal effect to such collective agreements. In Britain, they are only morally binding.

Legislation of the kind under discussion merely extends the operation of a collective agreement to all employers and employed in the industry affected by the agreements. In other words, the objective of every union, to obtain "a common rule" for the industry, is aided by legislation where the union and the employers entering into the agreement represent a sufficient proportion of the industry.

(41) Quoted by Margaret Mackintosh, "Legislation Concerning Collective Labour Agreements," p. 111.

Distinctive features of the Quebec legislation:

Quebec in 1934 was the first Canadian province to provide by statute that wages and hours of labour which are agreed upon by representatives of employers and employees in an industry for a given area may be made legally binding by order-in-council on all the employers and employees in that industry for the specified area. In the following years, Ontario, Alberta, Nova Scotia and Saskatchewan enacted legislation which, while somewhat similar to that of Quebec in its immediate effect has important differences.

The chief difference relates to the manner in which wage rates and other conditions are determined. In Quebec, the Collective Labour Agreements Extension Act (now the Collective Labour Agreements Act) stipulated that employers and one or more "associations of employees" first make an agreement and then one or both parties to the agreement might apply to the Provincial Minister of Labour to have certain terms of the agreement made obligatory for all engaged in that industry in the district covered by the agreement. The term "association of employees" was not defined in the Act of 1934 but by an amendment of the following year an agreement was to be with "one or more associations of bona fide employees" and in practice these were trade unions. The Collective Labour Agreements Extension Act, 1934, was therefore based on labour organization and collective bargaining.

Under the Industrial Standards Acts of Ontario, Nova Scotia, Alberta and Saskatchewan, on the other hand, there is no recognition either of trade unions or collective agreements as such. It is enacted that following a petition either from employers or employees, the Minister of Labour or a person delegated by him, may call a conference of representatives of employers and employees, at which a schedule of wages and hours for the industry represented is drawn up and agreed upon. This machinery for determining minimum conditions is similar to

that provided in the British Trade Boards Act of 1909 and 1918 for the establishment of minimum rates of wages in industries where no adequate collective bargaining machinery exists for the effective regulation of wages throughout the industry and where, having regard to the rates of wages prevailing in the trade, it seems expedient to the Minister to apply the Act.

Another point of difference between the two kinds of legislation relates to the enforcement of the order-in-council. In Quebec, this duty is imposed on a joint committee of employers and employees in each industry under an agreement, and only such a joint committee may bring an action in the courts to enforce the agreement or the Act.⁽⁴²⁾ In the other provinces except Alberta, the Minister may establish a joint advisory board with certain powers for each schedule, but the actual enforcement of the schedules is done by the governmental authority charged with the administration of the Act, assisted by special officers, called Industrial Standards Officers, appointed by the government.

An essential difference between the two types of legislation indicated by this analysis is that the Quebec statute confers self-government regarding wages and hours and hence is enforced by industry; while the Industrial Standards Acts, as more akin to minimum wage legislation, are enforced by government. Recently, however, Quebec has shown a tendency to put more power in the hands of the government. By a 1938 amendment, for instance, the Lieutenant-Governor-in-Council was given power to amend or revoke the decree extending the collective agreement at any time. Formerly this could be done only at the request of the parties to the agreement. As this and other recent amendments were enacted in the face of union opposition, they indicate a trend away from the idea of self-government towards that of state regulation.

(42) Section 20 of the Act reads "From and after the publication (of its by-laws), the committee shall constitute a corporation and shall have the powers, rights and privileges appertaining to ordinary civil corporations." In addition it has certain specified powers.

For purposes of reference in this and other chapters, Table 7 gives the total number of wage-earners and the estimated number of trade unionists for Canada and the provinces for the census year 1931. Of the wage earners in all industries, 12.1% were members of trade unions, but excluding the occupations unorganized in most countries, the percentage of trade unionists was 22.6.

Table 7

Total Number of Wage-Earners and
Number of Trade Unionists, Province by Province (a)

Province	Total Wage- Earners in All Indus- tries	Wage- Earners in Se- lected Indus- tries(b)	Estimated Member- ship in Trade Unions(c)	% of Trade Unionists to Wage- Earners in All Indus- tries	% of Trade Unionists to Wage- Earners in Selected Industries
Prince Edward Island	12,344	3,561	526	4.3	14.8
Nova Scotia	117,781	65,381	24,982	21.2	38.2
New Brunswick	84,232	38,628	9,807	11.6	25.4
Quebec	696,339	401,061	82,543	11.9	20.6
Ontario	965,607	542,171	93,382	9.7	17.3
Manitoba	170,739	74,738	24,717	14.5	33.1
Saskatchewan	145,568	46,199	12,238	8.4	26.5
Alberta	142,421	61,525	28,234	19.9	45.9
British Columbia	235,061	136,171	34,105	14.5	25.0
Canada	2,570,097	1,370,431	310,534	12.1	22.6

(a) Based on the Census of 1931 and Department of Labour Reports on Labour Organizations.

(b) Agriculture, Fishing, Trapping, Wholesale and Retail Trade, Finance, Insurance, Professional and Business Service, Public Administration and Personal Service (other than Barber and Hair-dressing shops and Hotels, Restaurants and Taverns) have been eliminated. This leaves Forestry and Logging, Mining and Quarrying, Manufacturing, Electric Light and Power, Construction, Transportation and Communication, Recreational Service, Custom and Repair, Barbers and Hairdressers, and Hotel Restaurants and Taverns.

(c) In 1931 there were approximately 105,000 members of wage-earners associations, such as Civil Service Associations, Teachers Associations, etc., which are not classified as Trade Unions in Canada, but are nevertheless organizations for the benefit of employees. No distribution by provinces of this group is available.

Workmen's Wages Act, 1937, of Quebec

The title of this Act was changed by an amendment in 1938 to "Collective Labour Agreements Act". This Legislation retains the main provisions of the Collective Labour Agreements Extension Act, 1934, but introduces some changes.

Under the Act as amended, the first essential is that there be a written agreement between one or more employers or an association of employers and an association of employees. An association is defined in the Act to include a professional syndicate as defined in the Professional Syndicates Act of 1924,⁽⁴³⁾ and registered with the Quebec government, a union or federation of syndicates, a group of employees or employers, bona fide or possessing the status of a civil person, "having as object the study, defence and development of the economic, social and moral interests of its members with respect for law and constituted authority".

In the new provision for agreements between "groups of employees" and an employer or employers, the Quebec legislation, although originally based on trade unionism is not necessarily so based at the present time. The status of existing unions and their possibilities for expansion depend largely on the interpretation given to the legislation by the Quebec government. For instance, "group of employees" may be a "company union", and agreements between company unions and employers have been legalized under the Act. Again, the Professional Syndicates Act states that "the admission of foreigners to a syndicate, in excess of one-third of its members shall involve the dissolution of such syndicate". This clause could conceivably be interpreted in a fashion seriously to hamper the international unions, which have the largest trade union membership in Canada.

(43) That Act states that "twenty persons or more engaged in the same profession, the same employment or in similar trades, or doing correlated work having for object the establishing of a determined product, may make and sign a memorandum setting forth their intention of forming an association or professional syndicate".

The provisions of an agreement which may be made obligatory are those regulating wages, hours of labour, apprenticeship, the proportion of apprentices to employees, classification of operations and of employees and employers, and such other provisions as the Lieutenant-Governor in Council may deem to be in conformity with the spirit of the Act. (44)

Industrial Standards Act, 1935, of Ontario

This Act, passed in 1935 and amended in 1936 and 1937, provides that wage rates and hours in any industry agreed upon by a sufficient proportion of employers and employees may, by order-in-council, be made binding on all employers and employees engaged in that industry in a certain district or in the whole province. When either representatives of employers or of employees in any industry petition the Minister of Labour to call a conference, the Minister, or an Industrial Standards Officer appointed by him, may convene a conference or a series of conferences of employers and employees in a certain zone to investigate and consider the conditions of labour in the industry and to negotiate minimum rates of wages and maximum hours of labour. Apprentices do not, as in Quebec, fall within the scope of the legislation. No reference is made in the Act to the method to be followed in getting the conference together. In some cases, public notice of such a conference is given in the press. Provision is made for the calling of a new conference to consider a new schedule. At any time after a schedule has been in force for at least a year, an Industrial Standards Officer may, with the approval of the Minister, convene such a conference. The Act is administered by the Industry and Labour Board of Ontario which also administers the Minimum Wage Act. (45)

(44) For a more detailed description of the Act see Appendix IV.

(45) For further details of the Industrial Standards Act of Ontario, see Appendix IV.

The Industrial Standards Acts of Alberta (1935), Nova Scotia (1936) and Saskatchewan(1937)

These Acts are in essence the same as that of Ontario.

A brief summary of each statute will be found in Appendix IV.

Developments under the Collective Labour Agreements Act and the Industrial Standards Acts.

To November, 1937, orders have been issued with respect to twenty industries in Quebec and nine in Ontario. (46) Relatively little action has been taken in the other provinces. Quite a few orders were made to begin with in Alberta, but not all of them have been continued. It is difficult to get information about the number of workers affected. According to a statement of Mr. David Croll in the Ontario House, (47) 65,000 workers were covered by orders in March 1937, of whom about one-third were unionized. Although numbers are not available for Quebec, it was stated by the government in June, 1938 that of a total provincial pay-roll of about \$451,000,000 (covering all employment including agriculture), approximately \$100,000,000 (48) was paid under the Collective Labour Agreements Act.

On the whole the types of industry covered by agreements under these statutes are not the mass production industries, but rather specialized or skilled trades. The bulk of the unskilled workers are therefore still dependent for protection on the older labour legislation covering minimum wages and working conditions.

Generally speaking, the Quebec legislation seems to have been used most and to be most active at the present time. As far as enforcement is concerned, there have been repeated complaints from workers that the orders were not being observed in Ontario. In Quebec, where enforcement is not in the hands of

(46) For a list of the orders-in-council issued in these five provinces see Appendix IV.

(47) Quoted in the Toronto Daily Star, March 16, 1937.

(48) Quoted in The Gazette, Montreal, June 2, 1938.

provincial officers but vested in a joint committee of employers and employees, and where most of the workers are unionized, there has been little dissatisfaction about the enforcement of the orders. It seems to be very difficult for provincial inspectors to enforce labour legislation under conditions where strong unions do not exist to help maintain the rights of the workers.⁽⁴⁹⁾

An Analysis of Agreements or Schedules in effect in competitive industries under the Quebec Collective Labour Agreements Act and the Industrial Standards Acts of Ontario, Alberta, Nova Scotia and Saskatchewan, (November, 1937)

The types of trades or industries for which orders-in-council have been issued may be divided into two classes, those which are competitive as between two or more provinces, and those which are non-competitive. The following is a summary of all the orders issued in competitive industries and of the orders in non-competitive industries where the industry is common to two or more provinces.⁽⁵⁰⁾ As only the Quebec statute deals with wage rates and other conditions relating to apprentices, they are omitted in the following comparative summary:

Competitive Industries in which Agreements have been legalized:

(a) Men's and Boys' Clothing:

Substantially similar wages and hours have been legalized in both Ontario and Quebec. This industry has for some time been organized by the Amalgamated Clothing Workers of America.

(b) Women's Cloaks and Suits:

The same rates of wages and hours have been legalized in both provinces. The International Ladies' Garment Workers' Union was chiefly responsible for the agreements.

(49) See Chapter 6 on Factory Inspection and the Enforcement of Labour Legislation.

(50) The details of these orders are given in Appendix IV, and a list of all the industries in each province subject to an order is also included.

- (c) Infants' and Children's Clothing:
In Quebec, this section of the clothing industry was covered by the men's and boys' clothing agreement but in Ontario it has not been made the subject of an order-in-council.
- (d) Dress Cutters:
Orders have been issued in Quebec but not in Ontario.
- (e) Millinery:
Agreements have been legalized in both Ontario and Quebec on a uniform basis. The United Hatters, Cap and Millinery Workers' International Union of America obtained the agreement in Quebec and petitioned for the conference in Ontario.
- (f) Glove Manufacturing:
An agreement has been legalized in Quebec but not in Ontario.
- (g) Fur Industry:
An agreement has been legalized in Quebec but not in Ontario. This industry is unionized and the rates of wages established under a trade union agreement in Ontario are higher than those in Quebec.
- (h) Boot and Shoe Industry:
An agreement has been legalized in Quebec but there is no agreement in Ontario.
- (i) Furniture Industry:
Agreements have been legalized in both provinces. Quebec has a 55-hour week, Ontario a 47-hour week and the hourly rates of wages in the various categories are somewhat higher for Ontario than for Quebec.
- (j) Upholstered Furniture:
An agreement has been legalized only in Ontario.
- (k) Brewing Industry:
Agreements have been legalized in Ontario and Alberta but not in Quebec. The working week is shorter in Alberta than in Ontario and the hourly rates of pay higher.

Non-competitive industries where agreements have been legalized in more than one province, show the following characteristics:

- (a) Baking Industry:
This industry is regulated by orders-in-council as follows: In Quebec, in the five largest cities; in Ontario, in Ottawa only; in Alberta, in Calgary and Edmonton and a large area surrounding each of these cities and including many towns. There are substantially similar wages per week for bakers in Quebec, Ontario and Alberta but higher wages for salesmen in Alberta. A 60-hour week or more prevails in Quebec, 56 hours in Ontario and 54 hours in Alberta.

(b) Building Trades:

Hours per week are much the same in Quebec (Montreal Division), Ontario, Nova Scotia, Saskatchewan and Alberta. Wages per hour are much the same in Ontario, Saskatchewan and Alberta; slightly lower in Nova Scotia and still lower in Quebec.

(c) Barbers and Hairdressers:

Weekly wages are somewhat higher in Ontario than in Quebec. Wages in some of the Saskatchewan cities are calculated on a different basis but seem to be in line with those of Ontario. For female hairdressers, the rates are higher in Saskatchewan than in Quebec.

Conclusions

The conclusions that follow from this review are three. First, the legislation has not established uniform standards or a suitable relation between standards of wages and hours as between provinces, and this applies to both competitive and non-competitive industries. In several industries, minimum wages and maximum hours have been fixed for one province but not for another. In other cases, where two provinces have fixed wages and hours for the same industry, the length of the working week and the hourly rates of pay often differ. Second, where uniform standards of wages and hours have been established as between provinces, almost invariably we find an industry that is well organized by a strong trade union. Third, where uniform standards do not exist, the rates of wages are as a rule lower and the working week longer in Quebec than in the other provinces.

Trends in Legislation for the Regulation of Wages

The main trends in recent legislation regarding wages in Canada have been first, the extension of minimum rates to male workers; second, the fixing of minima for numerous trades and industries and not simply those where wages are unduly low; third, the introduction of legislation to extend the scope of collective agreements.

Figure 1 is a line graph showing the effect of the concentration of the inhibitor on the rate of polymerization. The y-axis is labeled "Rate of polymerization" and ranges from 0 to 1.0. The x-axis is labeled "Concentration of inhibitor" and ranges from 0 to 1.0. The curve starts at (0, 1.0) and decreases as the concentration of inhibitor increases, approaching 0 as the concentration approaches 1.0.

The first trend is in line with long-established practice in other countries and is necessary especially in times of depression, if for no other reason than to protect female minimum rates.

The second and third trends are also seen in many other countries but here experience is not so uniform. Great Britain is the outstanding example of a country that fixes minimum rates only for "sweated" or low-wage industries, and this is done for men as well as women. Minimum rates have been fixed for all occupations in the trades covered.⁽⁵¹⁾ In some Australian states, the wages boards system covers a large proportion of industry but in South Africa as in Great Britain, minimum wage legislation applies only to unorganized workers whose wages are deemed too low. Other workers depend upon the normal processes of collective bargaining. Unionization has spread over a much wider group of occupations in Great Britain than in Canada but it is possible that recent provincial legislation recognizing trade unions and collective bargaining will change this situation in Canada. There are at least three advantages to the British situation; first, it does not set up a complicated governmental structure in a field of legislation that is admittedly hard to enforce; second, it does not tend to encourage workmen to look to the government instead of relying on themselves; third, it does not run the risk of setting minimum rates that become maximum rates. There appears to be little danger of the latter possibility when a minimum wage merely provides a "bottom" for workers not sufficiently strong to look after their own interests. Commons and Andrews, the well known American authorities, investigated this point and came to the conclusion that, "although it is of course difficult to segregate the effect of a legal minimum upon wage rates when

(51) See Dorothy Sells, "The British Trade Boards System", 1933, for a description of this system.

so many other influences are continually operating, the evidence available in this and other countries does not support the contention that wages above the minimum will be adversely affected." (52) Indeed, they find evidence to support the conclusion of the Women's Bureau of the United States Department of Labour that where minimum rates are "high enough to raise the entire depressed group to the cost-of-living level (they) seem to have raised rates in general". (53) But where the minimum wage legislation sets a minimum for each occupation there is some danger of the employer regarding these minima as the "going" rates.

Australia and New Zealand, in contrast to Great Britain, have extended their regulation of wages to practically all of industry and to all categories of work within an industry. This is true of states like Victoria that follow the trade board system as well as of those that follow the principle of compulsory arbitration. (54) The Commonwealth Arbitration Court has set up the following principles, among others: (55)

1. The establishment of a Basic Wage that shall be a minimum for unskilled workers. This minimum shall be a sum sufficient to cover "the normal needs of the average employee regarded as a human being living in a civilized community". This Basic Wage shall not be lowered for such considerations as those of international competition and the lack of profitableness of the enterprise. The reasoning here is that if an industry is of the type that can exist only by paying sub-minimum wages, it is not a desirable type of industry for the country.
2. The establishment of a Secondary Wage which includes "the extra payment to be made for trained skill or other exceptional qualities necessary for an employee exercising the functions required".

(52) Principles of Labour Legislation, 1936, p. 71.

(53) Ibid., p. 69.

(54) For a summary of the different methods of regulating wages see Appendix III.

(55) See George Anderson, "Fixation of Wages in Australia", Melbourne, 1929, for a good account of the scope of the Australian system and an insight into its complexity.

3. The wage for a man must cover the cost of maintaining a family but a woman's wage is on the basis of self-support only. (56)
4. When both men and women are employed in the same occupation, the wage-rate is fixed for the sex ordinarily found therein.

It may be noted that Australia has set up expert bodies for the continuous study of the cost of living and changes in the cost of living.

Developments in Canada are mid-way between those of Great Britain on the one hand and Australia and New Zealand on the other. (57) Canadian legislation is not restricted to "sweated" industries but neither does it go in for a detailed regulation of wages of all classes of workers, although there are some tendencies in that direction. Employers have been against any move in the latter direction because they dislike government interference; and employees have been afraid that unfavourable rates would be set and that minima would become maxima. Both Australia and New Zealand are strongly unionized and labour there has felt strong enough politically and economically not to fear a wide-spread system of wage-regulation and compulsory arbitration as developments that would simply freeze a status quo that might be unfavourable to labour.

The pattern that seems to be developing in Canada, then, has several aspects. First, there is minimum wage legislation for both men and women that seeks simply to set bare minima for various industries, and for the enforcement of which the government is responsible in all cases. The chief differences between

(56) It can be seen that Australia does not follow the principle laid down by the League of Nations of "equal pay for equal work." For an outline of the reasons see Anderson, "Fixation of Wages in Australia," Chap. XIX. See also the South Africa "Report of the Industrial Legislation Commission," 1935, p.27, et seq. for a discussion of the same formula.

(57) South Africa works under an Industrial Conciliation Act (1924) and a Wage Act (1925). The former encourages the formation of Industrial Councils and makes their collective agreements legally binding; the latter sets up a Wage Board to fix minimum wages. The Quebec system of wage regulation is very similar. See the South Africa Report of the Industrial Legislation Commission, 1935, for a description of how the system has functioned.

the provinces here is in the scope of such legislation. In British Columbia, the aim seems to be to set minimum rates only for unorganized and low-wage industries, leaving the regular processes of collective bargaining to take care of other workers without any governmental machinery whatever. In Quebec, the aim is to have the Fair Wage Board set minimum rates for all workers not under the Collective Labour Agreements Act. Ontario also originally had intended to set up a wide system of minimum wages but the Labour and Industry Board has found the technical difficulties to be considerable and a more restricted system may result.

2 A second aspect of the developing Canadian pattern for regulating wages is legislation extending the scope of collective agreements to apply to all workers in the industries affected, as in Quebec. The government merely legalizes the agreement that has been entered into by the employers and employees responsible for enforcing it. To the extent that a strong trade union movement develops and collective agreements cover a broader field of industry the government will have less work to do under its minimum wage legislation. (58)

Between these two, minimum wage legislation of the kind we have had in Canada since the early post-war years and legislation on collective agreements, stand the Industrial Standards Acts of Ontario, Alberta, Nova Scotia and Saskatchewan where the government aids in drawing up the agreement and is responsible for its enforcement. Here, the government has undertaken further statutory responsibilities in the field of regulating wages and this is a step in the direction of the Australian example.

(58) In this connection it may be noted that the South Africa "Report of the Industrial Legislation Commission" recommends the encouragement of industrial, rather than craft unions so that rates of pay may be established by collective bargaining for every class of labour in the industry concerned. See section 113, p. 42.

Recent events indicate, however, that Quebec is also moving in the direction of greater state control, although in a different way than the provinces just mentioned. A 1938 amendment, as already mentioned, gives the Lieutenant-Governor-in-Council power to amend or revoke the decree recognizing and extending a collective agreement at any time. It also appears that the Collective Agreements Act and the Fair Wage Act are regarded by the government as legislation making strikes unnecessary, and this attitude would certainly involve an extension of state regulation. When the National Catholic Federation of Textile Workers sent a delegation to the Honourable William Tremblay, Minister of Labour, to protest the action of the Dominion Textile Company in refusing to renew a collective agreement under the Workmen's Wages Act, (now the Collective Agreements Act) it was told, "Since we have on the statute books of Quebec two laws - the Act respecting Workmen's Wages and the Fair Wage Act - there should not be any other procedure invoked to straighten out the economic situation of the province." (59) The ordinary procedure of a trade union wishing to obtain a collective agreement in the face of the refusal of the company to negotiate and without provincial legislation requiring employers to bargain collectively or submit to arbitration, would be to strike. It appears that in Quebec, the union is supposed to apply to the Fair Wage Board for the establishment of minimum wages, although this might mean a considerable reduction in wages if the company involved were to adopt the minimum rates as the going rates. Under the legislation of British Columbia, Alberta and Nova Scotia it would appear illegal for a company to refuse to bargain with a representative trade union. (60)

(59) The Gazette, Montreal, April 12, 1938. The Fair Wage Act is declared to apply:

- "(a) to all employees who have not availed themselves, or who do not desire or are unable legally to avail themselves, of the provisions of the Act respecting Workmen's Wages;
(b) in all cases where it is shown to the Board's satisfaction that an association of employees cannot agree with an association of employers or with one or more employers contracting personally for the adoption of a collective agreement in virtue of the said Act respecting Workmen's Wages."
(60) See Chapter 5. This is also the law in the United States.

REFERENCES:

Nova Scotia: Industrial Standards Act, 1936
c. 3; 1937, c. 63.

Quebec: Workmen's Wages Act, 1937, c. 49;
Collective Agreements Act, 1938.

Ontario: Industrial Standards Act, 1935, c. 28;
1936, c. 29; 1937, c. 32.

Saskatchewan: Industrial Standards Act, 1937, c. 90.

Alberta: Industrial Standards Act, 1935, c. 47;
1936, c. 70; 1937, c. 69; 1938, c. 56.

Chapter 5. Legislation Concerning Trade Unions.

Introduction.

Trade unions are a modern development, the result of the growth of the industrial system. They appear first in Great Britain, therefore, and this fact, together with our common heritage of the common law, makes British experience fundamental.

Trade unions arose at a time when the prevailing economic and political philosophy was one of laissez-faire as opposed to the state regulation that characterized the previous period of British history. The impact of the factory system and free competition was such as to break down the old order and to cause serious suffering among the working people. The political and economic thought of the time not only prevented the state from taking remedial action but caused it to pass legislation such as the Combination Acts of 1799 and 1800, which made all combinations of workers for the improvement of their position, criminal. The first half of the 19th century, therefore, was characterized by great unrest resulting in mass movements of discontent such as those of the Chartists and the Luddites.

Legal thought was also dominated by the idea of individual freedom, that is, the right of every person under the law to full freedom in disposing of his own labour or his own capital according to his own will. The common law knew nothing

(61) Cf. A.V. Dicey, *Law and Public Opinion in England in the Nineteenth Century* (1920), "The best and wisest of the judges who administered the law of England during the fifty years which followed 1825 were thoroughly imbued with Benthamite liberalism. They believed that the attempt of trade unions to raise the rate of wages was something like an attempt to oppose a law of nature." (p.199)

of the trade union form of organization and its particular objects. The judges simply applied existing principles of law such as the doctrine of conspiracy and such statutes as existed (e.g. Combination Acts) to this new development. The unions, therefore, found themselves criminal conspiracies under the common law.

But as individuals, the workers were normally at the mercy of the greater economic power of the employer. Consequently, without the help of the state or the law, there was an irresistible tendency for them to form organizations to exert their collective strength for the improvement of their condition. As a result of this tendency and of the advocacy of certain individuals, the state gradually accorded legal rights to trade unions, and soon after the middle of the century there began a long line of legislation for trade unions designed to free them from the disabilities attached to them by the common law.

Before the 1850's, Canada had practically no industry so it is at this point that interest in Canadian law on the subject started. Until 1876 there was a somewhat similar development of trade union law in Canada and Great Britain. Since that date, Great Britain has proceeded further to develop the law of trade union; but in Canada similar clarification has not taken place, with the result that there is a "peculiar condition of trade union law in Canada"⁽⁶²⁾ which has been a grievance of trade unions in this country.

Freedom of Association

Part XIII of the Treaty of Peace, to which all countries that are members of the International Labour Organization have subscribed, lays down certain general

(62) Duff, J., in Chase v. Starr, see *infra*.

principles for regulating labour conditions which, it declares, are of urgent and special importance and should be applied by all nations. Among these principles is "the right of association for all lawful purposes by the employed as well as the employers".

Liberty of association is a fundamental right in democratic countries but unless an association of employees is permitted to negotiate, through its representatives, an agreement regarding working conditions with employers, the purpose (63) of the association is unattainable.

For purposes of reference, Table 8 gives statistics regarding the number of unions (including local branches) in each province and the estimated number of members, for the census year 1931 and the latest year available, 1936. Not all the unions reported membership, and the estimated unreported membership has been distributed among the provinces in proportion to the reported membership. Table 9 shows the distribution of trade union membership among the various main industries and trade groups for the same years.

General Statement

Legislation concerning trade unions has been enacted by the Dominion Parliament and by the legislatures of British Columbia, Alberta, Manitoba, Quebec, Nova Scotia, New Brunswick and Saskatchewan. The Dominion legislation dates from 1872. The constitutionality of certain of its sections has been questioned, since it attempts to make certain agreements

(63) That the right of workers to bargain collectively is still not always conceded in Canada is shown by the findings of the Royal Commission on the Textile Industry, 1938, p.179: "The textile industry in Canada has stood throughout its history on a basis of individual as opposed to collective bargaining. The post-war period down to the appointment of this Royal Commission, while it was productive of shop committees in some plants, was devoid of any effective association of workers and, therefore, of effective machinery for collective bargaining. The attitude of the employer as a whole toward bargaining with unions was distinctly negative at the time public sittings of this Commission were being held." And see the testimony of individual employers on p.184.

TABLE 8

NUMBER OF LOCAL BRANCHES OF INTERNATIONAL AND CANADIAN
TRADE UNION ORGANIZATIONS, INDEPENDENT UNIONS AND
NATIONAL CATHOLIC UNIONS IN EACH PROVINCE, WITH NUMBER
OF MEMBERS REPORTED AND TOTAL ESTIMATED MEMBERSHIP (a)

PROVINCE	1931			1936		
	UNIONS IN LOCALITY	MEMBERS REPORTED	TOTAL ESTIMATED MEMBERS	UNIONS IN LOCALITY	MEMBERS REPORTED	TOTAL ESTIMATED MEMBERS
Prince Edward Island	12	373	526	12	449	449
Nova Scotia	137	17,737	24,982	138	18,182	23,264
New Brunswick	124	6,963	9,807	116	7,283	9,314
Quebec	501	58,620	82,543	573	74,572	95,498
Ontario	1,046	66,317	93,382	1,093	79,831	102,223
Manitoba	187	17,553	24,717	188	14,555	18,624
Saskatchewan	212	8,692	12,238	193	7,417	9,490
Alberta	277	20,053	28,234	278	18,126	23,194
British Columbia	276	24,222	34,105	295	25,801	33,017
Locality not specified		9,147			8,002	
(a) Estimated membership in unions not report- ing		80,857			60,855	
TOTAL	2,772	310,534	310,534	2,886	315,073	315,073

(a) From the Dominion Department of Labour's Annual Report on Labour Organizations in Canada.

Table 9

Division of Trade Union Membership Among Various Industries and Trade Groups (a)(b)

Industry	1931		1936	
	Number	%	Number	%
Mining & quarrying	23,104	7.4	21,987	7.0
Building	36,736	11.8	32,446	10.3
Metal	17,794	5.7	26,200	8.3
Printing & paper hanging	14,937	4.8	16,027	5.1
Clothing, boots and shoes	15,682	5.0	23,285	7.4
Railroads	90,365	29.1	72,239	22.9
Other transportation & navigation	22,886	7.4	26,594	8.4
Personal service & amusements	33,538	10.8	23,410	7.4
All other trades & general labour	55,492	17.9	72,885	23.1
Total	310,554	100.0	315,973	100.0

(a) From Annual Reports on Labour Organizations in Canada, published by Department of Labour, Ottawa.

(b) The membership of each central body is included in the trade group in which most of its members are employed.

and trusts of trade unions valid, provides protection of union funds, and makes provisions enabling unions to hold property, all of which are matters of property and civil rights and presumably within the jurisdiction of the provinces. This was suggested by the Honourable Alexander Mackenzie at the time the bill was before the House; and the validity of these sections has been questioned by Perdue, C.J., and Trueman, J., of the Manitoba Court of Appeal in Chase v. Starr, (1923) 3 W.W.R. at pp.512, 541 and by Duff, J., of the Supreme Court of Canada, in the same case, (1924) 66 S.C.R. at p.507. A similar doubt was expressed by Raney, J., in Polakoff v. Winters Garment Company, (1928) 62 O.L.R., at p.54, and by Middleton, J., in Amalgamated Builders' Council v. Herman (1930) 2 D.L.R. at p.513.

The provincial legislation is designed to safeguard the right of free association and to protect workers from interference with that right. It may be, however, that the result of some of the provincial statutes, in the light of the decision in Taff Vale Railway Co., v. Amalgamated Society of Railway Servants (1901) A.C. 426, will be to make trade unions responsible for actions in tort. In the Taff Vale case it was held that the fact of registration implied a certain legal status for trade unions and the liability to be sued.

A. Dominion Legislation

(a) Trade Unions Act of 1872.

The immediate purpose of this Act was to remove from members of trade unions liability to criminal prosecution on the ground of conspiracy in restraint of trade. Several

(a) For a more detailed study of the Canadian law of trade unions see Margaret Mackintosh, Trade Union Law in Canada (Dept. of Labour, Ottawa) to which this section is greatly indebted.

members of the Typographical Union in Toronto and other cities were under arrest on a charge based on the criminal law of England with respect to trade unions as it was in 1792 when it became law in Upper Canada.

The Canadian statute was patterned after the English Trade Union Act of 1871. However, the English statute was divided into two parts, one of which applied to both registered and unregistered unions and the other to registered unions only; ⁽⁶⁴⁾ whereas the whole of the Canadian statute applies only to unions registered under its provisions. As only some 17 unions are registered under the Canadian Act and as it is probable that the "international" unions could not properly be registered, it can be seen that the statute has not had much effect.

A brief glance at the British situation in 1871 will serve to make Canadian trade union law more understandable. In Britain, before 1871, the objects which trade unions ordinarily pursued were at common law illegal as being in restraint of trade, so that agreements between the members as embodied in the constitution and rules of the union, and agreements between the union and others were illegal and unenforceable. The trade union itself was tainted with this illegality so that it could not bring an action in the courts to protect its property nor could it take summary action against officers who were guilty of fraud or misappropriation. ⁽⁶⁵⁾ Another consequence was that, under the law of criminal conspiracy ^(65a) as interpreted by some judges a trade union was a combination in illegal restraint of trade and, therefore, a criminal

(64) There is no fundamental difference in the legal status of registered and unregistered unions in Britain. In 1935, 449 unions out of 1,042 were registered. For a discussion of the advantages of registering, under the two statutes, see Appendix V.

(65) Provisional legislation was enacted in 1869 to correct this position.

(65a) c.f. Regina v. Stainer (1870) 11 Cox 483.

conspiracy. The purpose of the Trade Union Act of 1871 was to remove these disabilities, to enable trade unions to protect their property, to render their agreements and trusts enforceable, with certain exceptions, and to grant immunity from criminal prosecution on the ground that they were in undue restraint of trade.

The Act of 1871, therefore, enacted that the purposes of a trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of a trade union liable to criminal prosecution for conspiracy or otherwise. This provision of the English Act applied to all unions, registered and unregistered. As reproduced in the Canadian statute of 1872, it applied only to registered unions. But with the re-enactment of the provision removing trade unions from liability to criminal prosecution in the Criminal Code of 1892 (now s. 497), all trade unions were put on the same basis and this section of the Trade Unions Act became meaningless.

Another section of the 1871 statute enacted that the purposes of a trade union shall not, merely on the ground that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust. The agreements and trusts of trade unions were thus made legal and valid but the following section stipulated that nothing in the Act should enable a court to entertain legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of certain specified agreements, but that such agreements should not, on that account, be deemed unlawful. The agreements specified relate to the domestic affairs of a trade union, agreements between the members concerning working conditions, fees, penalties, benefits, etc., and agreements between one trade union and another. Such agreements were thus left to

the control of the union. These two sections of the Act also applied to both registered and unregistered unions.

In the Canadian Act they apply solely to registered unions and their restricted application has rendered them abortive. Apart from recent legislation in Nova Scotia and the incorporation by special statute of a few unions, the agreements and trusts of Canadian trade unions would appear to be unenforceable in the common law provinces, as they were in Britain before 1871. In other words, except by representative action on matters not relating to the objects of the union, trade unions cannot sue or be sued for breach of contract, nor can they sue for tort. In Quebec, under the Code of Civil Procedure, even if the common law of England on restraint of trade does not apply, a union which has no legal personality cannot sue or be sued in a representative action in the same way that a voluntary association may in the other provinces. (Society Brand Clothes v. Amalgamated Clothing Workers of America (1931 3 D.L.R. 361) ⁽⁶⁶⁾). By a statute of 1938, however, an officer of a trade union which does not possess civil personality may be sued on behalf of the union and the property of the union may be taken to satisfy damages.

Not all trade unions have rules for fining and expelling members for accepting employment contrary to the rules of the union, or for massing strike and benefit funds in one defensive fund, or for other purposes which were held by the courts in Britain to bring them within the doctrine of restraint of trade but, in general, the objects for which most trade unions are formed fall under this head. The agreements and rules relating to benefit funds (and other agreements specified in the Act of 1871) are so inseparable from these objects that the courts cannot

(66) An Act to facilitate the exercise of certain rights.

entertain an action to enforce such agreements. (Russell v. Amalgamated Society of Carpenters (1912) A.C. 421; Braithwaite v. Amalgamated Society of Carpenters (1922) 2 A.C. 440; Cox v. Amalgamated Union of Foundry Workers (1928) 44 T.L.R. 345.)

In Canada, in Chase v. Starr, 1923, when the Brotherhood of Locomotive Engineers, through its treasurer, brought an action for payment of moneys by the defendant as former secretary-treasurer, it was held by Galt, J., of the Manitoba Court that an unregistered trade union with rules restraining trade cannot have recourse to the courts for any purpose. The judgment of the Manitoba Court of Appeal in reversing the decision was to the effect that, -

"It should not be held, in the present condition of the law, that the union in question is an organization so tainted with illegality that the Court will not lend its assistance to recover the moneys in question."

An appeal to the Supreme Court of Canada was dismissed; Duff, J., in dealing with the case at length, stated, -

"May one not say that at this point one encounters a paramount policy which had to do with the protection of the owners of property against the defalcations of dishonest custodians? My conclusion is that since the Act of 1869 such an action as this has been maintainable in England, and consequently, the right to maintain the action was recognized under the law of England which was introduced into Manitoba in 1870..... The question is of great importance in Canada because of the peculiar condition of trade union law in this country....."

The Act of 1869 referred to is the Trades Union Funds Protection Act which provided for the recovery by members of a trade union of funds misappropriated and embezzled. The statement of Duff, J., would therefore apply only to Alberta, Saskatchewan and Manitoba because the law of England as it existed at earlier dates was introduced into the other parts of Canada.

The other leading case relative to this matter is the Ontario case, Polakoff v. Winters Garment Company

(1928) 62 O.L.R., in which an action was brought on behalf of a trade union to enforce a collective labour agreement.

Raney, J., stated:-

"The conclusion to which, therefore, I am compelled is that the law of this province applicable to the facts of the case is, to all intents and purposes, the law applicable to labour unions in England as it was declared to be.....and as it was before the doctrine of restraint of trade as applied to labour unions was ameliorated..... in 1869 and in later years. In other words, I am compelled to hold that in this province, the International Ladies' Garment Workers' Union is an illegal society, incapable because of its illegality of maintaining this action, or indeed any other civil action in an Ontario Court."

It would seem to be the law in Canada, therefore, that a trade union whose main purposes are in restraint of trade, and which is not registered under the Trade Unions Act, cannot have recourse to the courts for any purpose, except, probably by representative action on matters not relating to the objects of the union. (67) This stand is in agreement with English decisions before 1871 and with recent English judgments where it is pointed out that, but for the Trade Union Act of 1871, trade unions with rules for restraining trade are unlawful at common law to the extent that their agreements and trusts are unenforceable. (68)

The Liability of Trade Unions for Tort in Strikes.

The question remains of the liability of trade unions in actions for damages against them for tort. In Great Britain, the Trade Disputes Act of 1906, passed as a result of the Taff Vale decision, prohibits an action against a union for tort. This prohibition applies to

(67) Query - Can an action for the recovery of misappropriated trade union funds be brought anywhere in Canada except in the Prairie Provinces? See Chase v. Starr, supra.

(68) For a note on the legal status of collective labour agreements see Appendix V.

representative actions as well as to actions against unions in their own names. The reasoning here is that without such protection the purposes of trade unions would largely be frustrated. Trade unions are not like corporations. Their purposes are charged with a social interest. They do not exist for profit. Their funds are built up from individual contributions from wage-earners. Incorporation is a measure of protection for business men and investors as it protects them from personal liability to which they were formerly open in the conduct of their business and the search for profits. But incorporation and other means of making trade unions liable for actions in damages, puts the trade union in a very vulnerable position. The objects of trade unions are normally achieved, where the employer and others do not co-operate, by methods which may cause some sort of injury to employers and non-union workers by interfering with their business or employment. The doctrine of civil conspiracy, which was developed in England after the doctrine of criminal conspiracy had been removed for trade unions by the Conspiracy and Protection of Property Act of 1875, exposes trade unions to actions for damages in respect of certain acts committed in contemplation or furtherance of trade disputes. It places employees in a more vulnerable position than employers in this respect. With an unsympathetic court, the purposes of trade unions can in practice be defeated under these conditions. In any case, employers, realizing the financial weakness of most unions, might follow a policy of repeated and lengthy litigation which the unions could not stand. Furthermore, during strikes it is very difficult to fix responsibility for property damage, although the normal thing to do is to accuse the unions. But the unions

point to such facts as were disclosed in the evidence before the La Follette Senate Committee in the United States to show that some business men will promote property damage to discredit unions. The Taff Vale decision was disastrous to the trade union concerned. The Trade Disputes Act of 1906 was designed amongst other things, to rescue British trade unions from the disabilities of the doctrine of civil conspiracy and exempted them from all action for tort; but no similar action has been taken in Canada by any of the provinces, within whose jurisdiction the matter falls.

In Canada, the question is complicated. Outside of
(69) Quebec all the members of an unincorporated association may be sued by means of a "representative action" if the circumstances of the case bring them under the rule that "where there are numerous persons having a common interest in one cause or matter, one or more of such persons may sue or be sued or may be authorized by a judge to defend in such action on behalf of or for the benefit of all persons interested". The general principles of the liability of members of voluntary associations have been stated as follows:

"In case of associations for purposes other than those of individual profit, the principle is established, at any rate as regards contractual liabilities, that the authority conferred by the members on the agents is not an authority to pledge the credit of each member generally, but only to the extent of the common property... In the case of liability for wrong, it seems that no attempt has ever been made to establish any wider liability of the members. On the other hand, it is clear that within the ordinary limits of the liability of a principal for the acts of his agent, the social property will be liable whether for contract or wrong, through the medium of proceedings brought by the stranger against the members generally in what is called a 'representative' action, a few prominent members being selected to represent all; or against

(69) Under Article 81 of the Code of Civil Procedure of Quebec no one may plead in the name of another; and see also Society Brand Clothes Ltd. v. Amalgamated Clothing Workers of America (1930) Q.R. 48 K.B. 14 confirmed by the Supreme Court of Canada, (1931) 3 D. L. R. which held that under Quebec law a representative action could not be brought and that an unincorporated trade union could not be sued as a union. The Quebec statute of 1938 "to facilitate the exercise of certain rights", enables trade unions without civil personality to be sued through an officer of the union. Unions registered under the Professional Syndicates Act of Quebec are constituted corporations.

the trustees in whom the common property is vested; or by proceedings brought by an officer who has been compelled to pay damages to a stranger, for an indemnity against the members and trustees. In this way the social property is treated in effect as being what it is in truth;- the property of a body distinct from its members... The liability of unions and their funds... follows from the general principles of agency applied to voluntary societies, and, independently of any special status conferred on registered unions, is enforceable by means of a representative action. The existence and extent of the agency is, of course, a matter of fact, so long at any rate, as the acts done are within the purposes for which the union legally exists."(70)

The interpretation of these principles by the judiciary of the various provinces, however, varies considerably. In Ontario the principle seems now to be firmly established that:-

in an action to recover damages for a tort, the Rule (for the naming of representatives as defendants on behalf of an unincorporated society) cannot be invoked unless it is intended to be alleged that the unincorporated body is possessed of a trust fund and such circumstances exist as entitle the plaintiff to resort to that fund in satisfaction of his claim; in such case the trustees may be appointed to represent the members in defending the fund.(71)

This ruling was followed by the Second Divisional Court of the (72)
Appellate Division in Robinson v. Adams. In this case, where the Hamilton Motion Picture Projectionists' Local Union 303 did not have a trust fund, it was held that the union could not be sued and that therefore an order for representation should not be made.

In Ontario before these cases, in Quebec prior to the judgment in the Society Brand Clothes, and in other provinces damages have been awarded against unions without the

(70) W.M. Geldart, The Status of Trade Unions in England (1912) 25 Harvard Law Review. Quoted by Margaret Mackintosh, Trade Union Law in Canada, p. 25.

(71) Middleton J., in Barrett v. Harris (1921) 51 O. L. R., at p. 491.

(72) (1924-25) 56 O. L. R. 217.

existence of a trust fund having been ascertained. In Manitoba, Cotter v. Osborne ⁽⁷³⁾ and Vulcan Iron Works Company v. Winnipeg Lodge No.174 ⁽⁷⁴⁾ and Allied Amusements Limited v. Reaney ⁽⁷⁵⁾ are such cases; in British Columbia, Schuberg v. Local International Alliance of Theatrical Stage Employees et al, ⁽⁷⁶⁾ and in Nova Scotia, Cumberland Coal and Railway Co., v. McDougall. ⁽⁷⁷⁾ The usual result in such cases has been either for the union to disband or for the damages awarded to be paid by a special assessment on members plus aid from other unions or the international ⁽⁷⁸⁾ (where the defendant union is a local).

Only one case involving the liability of a trade union for damages in tort (except the Quebec case referred to above) ⁽⁷⁹⁾ has gone to the Supreme Court of Canada. The dicta of the judges differed to the extent of indicating that a trade union could not be sued in a representative action and asserting ⁽⁸⁰⁾ that it could.

To sum up, the liability of trade unions in tort has been definitely laid down in Great Britain by statute. In Canada, this point is not covered by legislation except in

(73) (1906) 16 M.R. 395; (1909) 18 M.R. 471; C.R. (1911) A.C. 137.

(74) (1911) 21 M.R. 473.

(75) (1937) 3 W.W.R. 193.

(76) (1926) 3 D.L.R. 166; (1927) 2 D.L.R. 20. The judges were equally divided.

(77) (1910) 44 N.S.R. 535.

(78) Practically all Canadian unions must be sued through representatives and not in their own name, because so few of them have registered under the Trade Union Act of 1872. The courts, however, have not always observed this distinction, chiefly because the legal principles involved were not clarified until recent years. See Barrett v. Harris, supra.

(79) In an Ontario case (Metallic Roofing Company v. Jose (1909) A.C.30) in which the judgment awarding damages was appealed to the Judicial Committee of the Privy Council, a new trial was directed on the ground that the judge had misdirected the jury as to what constituted an actionable wrong. The matter was then settled out of court. Leave to appeal Cotter v. Osborne to the Privy Council was asked for too late.

(80) Williams and Rees v. Local Union No.1562, United Mine Workers of America, (1919) 59 S.C.R. 240. See the discussion in Margaret Mackintosh, Trade Union Law in Canada, p.39.

(81)
British Columbia and Quebec. In Ontario, the courts have clearly enunciated the guiding principles, which are based on those laid down in Britain for actions against voluntary associations other than trade unions. Otherwise, the state of the law is in some confusion. The liability of a trade union would appear to be different according to its location in Quebec, in Ontario or in British Columbia, Manitoba and Nova Scotia. The functions of trade unions are therefore hindered by this contradictory state of the law.

As far as criminal conspiracy is concerned, section 590 of the Criminal Code was intended to reproduce in Canada protection given trade unions in England against the charge of criminal conspiracy by the Conspiracy and Protection of Property Act of 1875. But the protection given trade unions in England against the equally disabling charge of civil conspiracy by the Trade Disputes Act of 1906, has not been reproduced in any of the Canadian provinces.

(81a)

Picketing and Injunctions.

The statutory law relating to picketing is found in section 501 of the Criminal Code which was enacted first in 1872 and amended in 1892 and 1934. The varying interpretations of this section by the courts have led to great dissatisfaction among work-people. In particular, Canadian courts have placed reliance on the English case of Lyons v. Wilkins without adequate consideration of the later English case of Ward, Locke & Co., v.
(81b)
The Operative Printers' Assistants Society. Although a violation of section 501 is a criminal offence, and therefore under Dominion jurisdiction, yet, since picketing may cause injury to the property of the employer whose premises are picketed, a civil action for damages is often brought or an injunction is

(81) See within, under the heading of the province.

(81a) See Appendix V for a note on the law of picketing.

(81b) For the details of these two cases see Appendix V.

sought to restrain picketing. The frequency with which injunctions, interlocutory or permanent, have been granted is the chief reason organized labour has, particularly in recent years, pressed for some statutory restriction on them. As the purpose of an injunction is to restrain some activity likely to affect property interests detrimentally, any statutory regulation of injunctions would be a matter for the provincial legislatures.

Only one picketing case has reached the Supreme Court of Canada and the facts in this case did not permit any statement clarifying the law as regards what might be called border-line cases under section 501. No civil case involving an order enjoining workers from picketing has been before the Supreme Court. In the provinces, only a few cases of prosecution under section 501 have reached the higher courts. Probably the chief difficulty regarding the law of picketing and the issuing of injunctions in connection with picketing arises from the fact that injunctions are being issued to restrain violations of an allegedly criminal nature under section 501, a type of violation for which they are not appropriate. (See Robinson v. Adams (1924) 56 O.L.R. 217 per Middleton, J.A. at p.224; Allied Amusements Limited v. Reaney et al; Kershaw Theatres Limited v. Reaney et al, (1937) 3 W.W.R. 193, at pp.201-2).

The British Columbia Court of Appeal has twice divided equally on picketing cases, which caused one learned judge to suggest that the ".....National Parliament..... declare beyond doubt, if it feels so disposed, that it regards what the appellants have done as constituting a crime. (Martin, J., Rex v. Richards and Woolridge, (1934) 2 W.W.R. 390, (1934) 3 D.L.R. 332). The need for such clarification appears as great now as when it was recommended in 1933.

B. Provincial Legislation

1. British Columbia.

British Columbia has a history of legislation concerning trade unions since 1902 but it has chiefly been interested with defining the liability of trade unions in connection with trade disputes. On December 10, 1937, the final reading was given to "An Act respecting the Right of Employees to organize and providing for Conciliation and Arbitration in Industrial Disputes", which, as its title indicates, goes beyond the scope of the previous legislation.

Trade Unions Act of 1902

This Act followed a judgment awarding heavy damages and costs against the miners' union at Rossland. It was based on bills introduced in the British House of Commons in 1902 following the Taff Vale decision. It declares no trade union or its trustees liable for any wrongful act in connection with a labour dispute unless the members of the union, or its executive committee acting within their jurisdiction, authorized or concurred in the wrongful act. No union or its officers may be enjoined from or held liable in damages for communicating facts respecting any employment or for persuading, without unlawful acts, any person not to accept employment. Another section gives the same immunity with respect to publishing

information concerning a labour dispute and to warning persons not to seek employment where there is a strike.

(82)

Industrial Conciliation and Arbitration Act (1937)

This Act explicitly recognizes the right of "employers and employees to organize for any lawful purpose" and the right of "employees to bargain collectively with their employers and to conduct such bargaining through representatives of employees duly elected by a majority vote of the employees affected". It provides a penalty of a fine of \$500 for each offence for "any employer or employees refusing so to bargain". Any written or verbal contract restricting these rights of the employees is declared unlawful. Every organization of employers or employees is required to file certain information with the Minister of Labour, to wit, a true copy of its constitution, rules and by-laws; a complete statement of its objects and purposes; and an annual list of the names and addresses of its officers; but such information shall not be open to inspection by the public.

2. Alberta

The Freedom of Trade Union Association Act, 1937,

declared it lawful for employees to form trade unions and to bargain collectively with their employer or employers through the officers of the unions and unlawful for the employer to impose any restriction on these rights when engaging workmen. A penalty was provided for any attempt on the part of the employer to prevent a worker from joining a union through dismissal or threat of dismissal. This statute was repealed in 1938. The Industrial Conciliation and Arbitration Act, 1938, contains somewhat different provisions with regard to the agents for collective bargaining. The new Act, like that of British Columbia, states that bargaining may be conducted through representatives of employees elected by a majority vote of the

(82) Short title.

employees affected, and the employer is required to bargain collectively with such representatives. Unions are required to file with the Minister copies of constitutions and by-laws and the names of officers and, when requested, to furnish the Minister with a confidential statement of receipts and expenditures.

3. Saskatchewan

The Freedom of Trade Union Association Act, 1938, enacts provisions similar to those made in Alberta in 1937 and requires unions to file with the Minister a copy of their constitutions, bylaws, etc., a list of their officers, and a statement of the number of their members.

4. Manitoba

The Strikes and Lockouts Prevention Act, 1937, repeals the Industrial Conditions Act of 1919 but re-enacts two of its clauses. These clauses "recognize" the right of employees to organize for any lawful purpose and declare that employers and employees "shall have the right to bargain with one another individually or collectively through their organizations or representatives". Any person "who seeks by intimidation or threat to compel any employee to join or refrain from joining any union or voluntary association of employees in contravention of these sections" is liable to a fine of from \$10 to \$1,000.

5. Quebec

The Professional Syndicates Act, enacted in 1924, empowers the Lieutenant-Governor-in-Council, on application, to authorize the incorporation of an association of twenty or more persons in a trade or related trades as a professional syndicate which is constituted "a corporation enjoying civil rights". Only British subjects may be on the executive committee and two-thirds of the members of the syndicate must be British subjects. Most of the organized workers in Canada are affiliated with international

trade unions and it is doubtful if these could be a professional syndicate under the Act.

Professional syndicates may enter into contracts or agreements with other syndicates or persons "respecting the attainment of their objects and particularly such as related to the collective conditions of labour", and exercise before the courts the rights of their members in matters affecting their collective interest. (83) The Act provides for the enforcement of any collective agreement entered into by representatives of a professional syndicate and one or more employers or employers' associations, a copy of which is deposited with the Minister of Labour of the province. The agreement is legally binding on the members of the associations if they have not resigned and given written notice within eight days after the agreement has been registered. Provision is made for federation with other syndicates.

The Workmens' Wages Act of 1937, (now the Collective Labour Agreements' Act) and the Collective Labour Agreements Extension Act, 1934, which it replaced, apply to collective agreements between associations of employers and of employees except in agriculture. The latter statute was amended in 1935 to define its scope as dealing with "a collective labour agreement between, on the one part, one or more associations of bona fide employees according to the decision of the Minister of Labour, and, on the other part, employers of one or more associations of employers". The part underlined was the part added. The new wording was designed, according to the then Minister of Labour in a speech in the Legislative Assembly "for the purpose

(83) Professional syndicates may acquire and hold property, create benefit funds, etc. Funds for special purposes must be kept separate from each other and from the general fund of the syndicate. The mutual funds are not attachable except for the payment of the benefits to which a member may be entitled. Provision is made for the liquidation and distribution of assets.

of preventing the organization of company unions and the recognition of Communist Unions". (The Gazette, Montreal, May 2, 1935). However, under the Workmen's Wages Act, an "association" was defined very broadly to include a professional syndicate as defined in the Professional Syndicates Act and registered with the Quebec government, a union or federation of syndicates, a group of employees or employers, bona fide or possessing the status of a civil person, "having as object the study, defence and development of the economic, social and moral interests of its members with respect for law and constituted authority"⁽⁸⁴⁾. Under this definition company unions have been formed and agreements made between companies and the company unions.

The Fair Wage Act, 1937, and the Workmen's Wages Act, 1937, contained sections dealing with freedom of association which differed in some particulars, but they were repealed in 1938 (Bills no.19 & 20) and identical sections enacted in the two acts. The title of the latter act was changed to Collective Labour Agreements' Act. The amendments provide penalties of a fine or imprisonment, (provided government consent is given to prosecute) for anyone who (1) prevents or attempts to prevent, by threats or otherwise, an employee from becoming a member of an association; (2) makes "an attempt upon the freedom of labour of an employee, by dismissing him, causing him to be dismissed, trying to have him dismissed or preventing or trying to prevent him from obtaining work,-

- a. Because he is a member of an association, or
- b. Because he is not a member of any association, or
- c. Because he is not a member of a particular association,-..";

In making illegal any strike or other action to prevent the hiring of non-union employees or to bring about the dismissal of such employees, these amendments make it almost impossible for

(84) See also the discussion of this Act in Chapter IV.

(85)
workers to obtain a wholly unionized shop. On this point legislation in Quebec differs from that in British Columbia, Alberta and Nova Scotia which facilitates or expressly permits agreements for a closed shop.

An Act to facilitate the exercise of certain rights: (Bill 88, 1938)

This Act, passed in 1938, affects the liability of trade unions. The bill enacts that "every group of persons associated for the carrying out in common of any purpose or advantage of an industrial, commercial or professional nature in this province, which does not possess therein a collective civil personality recognized by law and is not a partnership within the meaning of the Civil Code, is subjected to the provisions of Section 2 of this Act." Section 2 reads, "The summoning of such group before the courts of this province, in any recourse provided by the laws of the province, may be affected by summoning one of the officers thereof at the ordinary recognized office of such group or by summoning such group collectively under the name by which it designates itself or is commonly designated or known."

"The summoning by either method contemplated in the preceding paragraph shall avail against all the members of such group and the judgments rendered in the cause may be executed against all the moveable or immoveable property of such group."

(85) The chief arguments against the wholly unionized or closed shop are that it interferes with the rights of the employer and of the individual worker. The chief arguments for the closed shop are that (a) it is the logical conclusion to the collective bargaining procedure, which interferes with the unrestricted rights of the employer in any case; (b) to be effective as a collective bargaining agent the union must perforce be interested in the wages and conditions of non-members because there is too great a risk of having the whole union structure broken down by a minority of non-unionists; (c) non-unionists usually gain by the activities of the union and therefore they should be made to share the cost of such activities by becoming members. These latter arguments may be summed up in the statement that if collective bargaining is granted to be socially and economically desirable, there is no reason why all workers should not be required to belong to the union which conducts that collective bargaining and share in its activities, costs and benefits.

The debate in the Quebec legislature over this Act showed that it was introduced with the trade unions in mind. In effect it makes it possible to sue trade unions and gives them much the same legal standing as corporations whether they are incorporated or not. Before the enactment of this statute, trade unions in Quebec had been in a particularly sheltered position because the Code of Civil Procedure made no provision for representative actions against voluntary associations. (86) Now, that sheltered status is abolished and there are no restrictions on actions for damages against unions such as were incorporated in the British Trade Dispute Act of 1906 or are implicit in the representative action as interpreted by the courts in Great Britain and Ontario. (87)

6. Nova Scotia

The Trade Union Act of 1937 declares lawful the forming of unions by employees. It enacts that every employer "shall recognize and bargain collectively with the members of a trade union representing the majority choice of the employees eligible for membership" in the union when requested to do so by the officers under penalty of a maximum fine of \$100 and, in default of payment, thirty days imprisonment. It is unlawful for an employer to impose restrictions on membership in trade unions when hiring a worker nor may he dismiss or threaten to dismiss or in any way penalize an employee to prevent him from joining a union.

In addition to the clauses designed to ensure freedom of association, the Trade Union Act of Nova Scotia requires "every trade union" to file with the Provincial Secretary

(86) Society Brand Clothes Limited v. Amalgamated Clothing Workers of America (1930) Q. R. 48 K. B. 14; (1931) 3 D. L. R. 361.

(87) See the discussion in this chapter under Dominion Legislation.

a copy of its constitution and by-laws, and, under penalty to make annual returns as to receipts and expenditures and any further information required by the Provincial Secretary. Treasurers of unions must render an account of moneys received and paid when required to do so by the rules of the union. Accounts must be audited and any balance and securities and effects must be handed over to the person or persons designated by the members of the union. Such person or persons may, on behalf of the union, sue the treasurer for the amounts due and for securities, etc.

7. New Brunswick

The Labour and Industrial Relations Act of 1938

recognizes the right of employers and employees to organize in associations, trade unions or other groups for any lawful purpose and declares that it "shall be lawful for employees to bargain collectively with their employer and to conduct such bargaining through their representatives duly elected by a majority vote of the employees affected or through the duly chosen officers of the organization to which the majority of such employees belong." Section 9 fixes a fine of not more than \$100 for "any employer" or "any person" who "by any act or threat calculated to intimidate, seeks or attempts to induce or compel any person

- (a) to join or refrain from joining or belonging to any organization, or
- (b) to work or abstain from working or seeking employment."

The statute has a section requiring the constitution, by-laws, names and addresses of officers, and an annual return regarding receipts and expenditures to be filed with the Minister when requested by him. As in Nova Scotia, the treasurer of the organization must render an account according to its by-laws and if required to do so by the members must turn over to a designated person all books, securities, money, etc., of the organization. If he fails to do this he may be sued by any person or persons on behalf of the organization.

Summary

The Canadian Trade Unions Act of 1872 did not, in fact, remove from trade unions the civil disabilities of an organization whose purposes were in restraint of trade. Consequently, the legal status of trade unions in Canada has been very unsatisfactory. There is also grave doubt as to the validity of the statute itself.

Moreover, the hostile attitude of many employers to collective bargaining has defeated the chief purpose of unions in organizing to bring about greater equality in bargaining power. Table 10 analyses strikes and lock-outs in Canada for six years and shows that a considerable number of strikes and a substantial loss of working time has been occasioned by disputes over the recognition of unions or dismissals for union activity; and that industrial disputes resulting from these causes have increased rather than decreased in recent years. Such disputes cause economic dislocations, financial loss and bad feeling between essential groups within the state. All these things are matters of governmental concern. In the past, although political leaders have generally maintained the right of workers to form unions and to bargain collectively, neither the Dominion nor provincial governments have taken action to make that right an effective one. To meet this situation the Trades and Labour Congress of Canada sponsored a "Bill respecting the rights of employees to organize" which it placed before each of the provincial governments prior to the 1937 sessions of the legislatures. It is undoubtedly responsible for the legislative activity that occurred in this respect in 1937 and 1938. It is questionable whether the new legislation will do away with costly industrial disputes about the right to unionize, not only because of gaps in provincial legislation, but because of the lack of enforcement bodies under these statutes.

In conclusion, it may be stated that many phases of trade union law are in "a peculiar condition", but action has been taken by some legislatures to clarify them. All the

TABLE 10.

(a)

STRIKES AND LOCKOUTS IN CANADA, 1920, 1926, 1929, 1932, 1936 and 1937.

Cause or Object.	1937			1936			1932		
	Number of Strikes and Lockouts	Time Lost in Strikes and Lockouts Days	Number of Strikes and Lockouts	Time lost in Strikes and Lockouts Days	Number of Strikes and Lockouts	Time lost in Strikes and Lockouts Days	Number of Strikes and Lockouts	Time lost in Strikes and Lockouts Days	Number of Strikes and Lockouts
<u>UNIONISM</u>									
Recognition of union	39	464,302	19	95,983	7	31,213			
Employment of union members only (b)	15	16,232	3	364	5	2,065			
Discharge of workers for union activity	21	31,951	20	11,784	1	400			
Union jurisdiction	-	-	-	-	-	-			
To secure or maintain union wages or working conditions	14	18,845	22	27,385	13	5,082			
Other union questions	1	110	-	-	-	-			
Total Unionism	90	531,440	64	135,516	26	38,760			
Wages	130	285,554	59	101,926	55	81,624			
Hours of labour	-	-	2	950	-	-			
Other causes affecting wages and working conditions	28	18,345	17	19,686	15	31,756			
Discharge of workers	14	13,225	5	845	10	47,340			
Employment of particular persons	7	16,175	1	150	2	590			
Sympathetic	5	18,346	6	16,398	5	53,710			
Unclassified	4	3,308	2	1,526	3	1,220			
Total	278	886,393	156	276,997	116	255,000			

(a) Based on annual reports by the Department of Labour, published in the Labour Gazette.

(b) "or membership" added for 1936 figures.

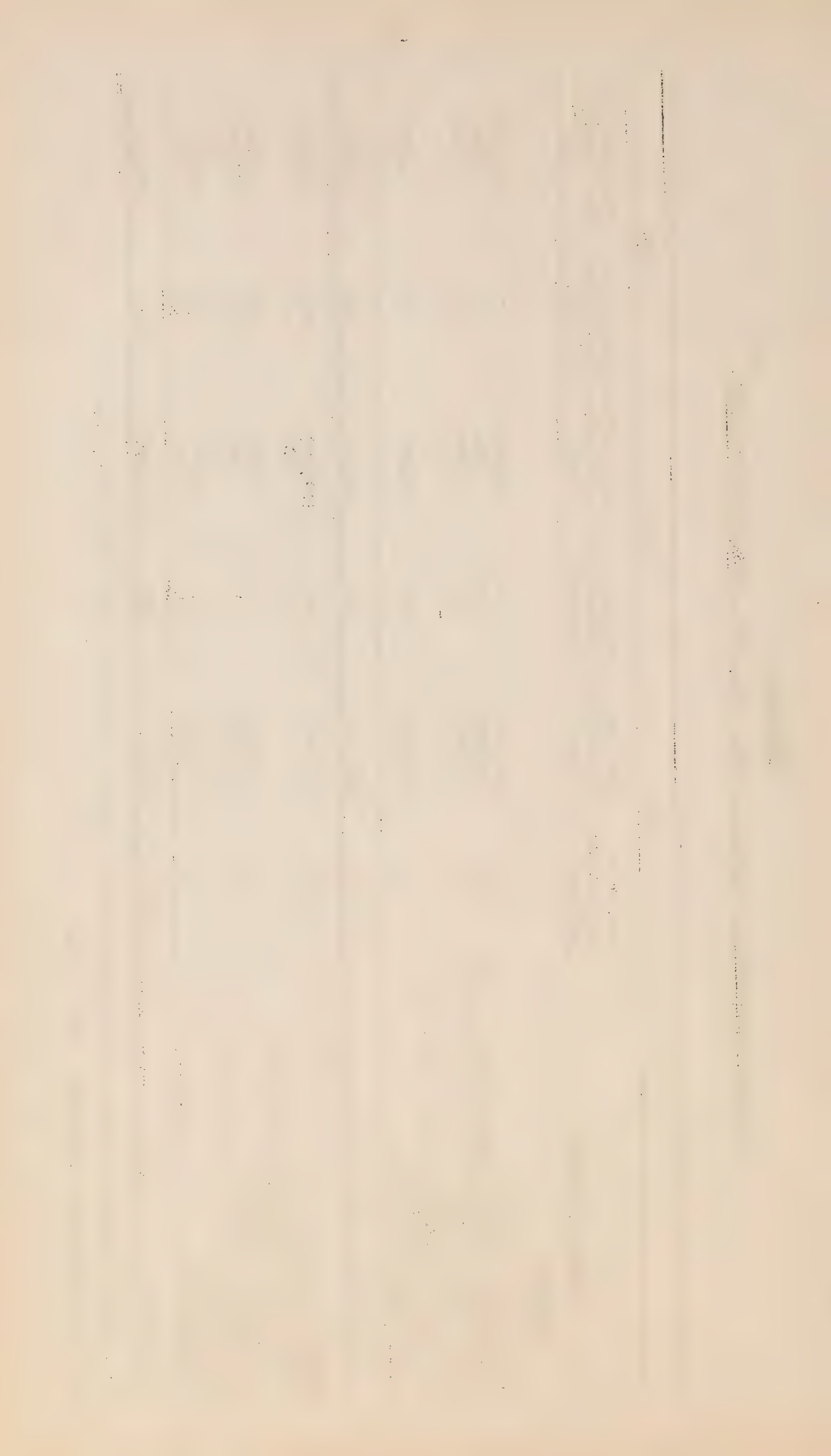


TABLE 10 (Cont'd)

(a)
STRIKES AND LOCKOUTS IN CANADA, 1920, 1926, 1929, 1932, 1936 and 1937

Cause or Object	1929			1926			1920		
	Number of Strikes and Lockouts	Time lost in Man Working Days	Number of Strikes and Lockouts	Time lost in Man Working Days	Number of Strikes and Lockouts	Time lost in Man Working Days			
<u>UNIONISM</u>									
Recognition of union	3	12,040	3	18,392	18	101,738			
Employment of union members only	2	132	6	18,139	3	1,375			
Discharge of workers for union activity	-	--	2	435	(c)				
Union jurisdiction	1	12	-	--	(c)				
To secure or maintain union wages and working conditions	10	10,029	16	180,184	(c)				
Other union conditions	-	--	-	--	(c)				
Total	16	22,213	27	217,150	21	103,113			
<hr/>									
Wages	45	106,514	35	72,455	205(d)	685,527			
Hours of labour	-	--	2	2,343	7	23,912			
Other causes affecting wages and working conditions	16	20,008	1	100	(c)				
Discharge of workers	9	3,131	8	3,190	22(d)	20,361			
Employment of particular persons	2	490	1	18	7	3,988			
Sympathetic	2	2,580	2	1,350	5	1,538			
Unclassified	-	--	1	205	18	48,315			
Total	90	154,936	77	296,811	285	886,754			

(a) Based on annual reports by the Department of Labour, published in the Labour Gazette.

(c) These headings not used in 1920.

(d) These figures not analyzed for causes connected with unions.

provinces but Ontario and Prince Edward Island have passed legislation recognizing the right of workers to organize and to bargain collectively. The Manitoba Act also recognizes the right of employers and employees to bargain with each other individually. In Nova Scotia, a penalty is provided for an employer who refuses to recognize and bargain with a trade union representing the majority choice of the employees eligible for membership when requested to do so by the officers of the union. In British Columbia and Alberta, it is unlawful for an employer to refuse to bargain with the representatives of employees duly elected by the majority of the employees and there is a penalty for any employer refusing so to bargain. In the other provinces, statutes impose no duty on the employer as regards bargaining. Nova Scotia and New Brunswick have made provision for the protection of trade union funds. British Columbia has been for some time the only province to follow Great Britain in placing statutory restrictions on actions for damages against trade unions. The Dominion Parliament amended the law of picketing in 1934 to restore it to the position held before 1892.

A study of the functions of trade unions is involved in any study of Dominion-provincial relations. In seeking better working conditions, higher wages, safer practices, a reasonable rate of speed for machinery, etc., they inevitably affect such problems as health and unemployability. These are problems on which governments spend a good deal of money. ⁽⁹⁰⁾ Furthermore, the enforcement of labour legislation, which is proving very difficult ⁽⁹¹⁾ for governments is simpler where competent unions exist to ensure that workers' rights under labour legislation are observed.

(90) See Public Assistance and Social Insurance by A. E. Grauer.

(91) See Chapter 6 on the Enforcement of Labour Legislation.

Unions, however, are not faced with a situation that makes expansion or even normal activity, easy. The factors affecting them have already been analyzed and may be summarized as follows:

1. Their agreements and trusts are not enforceable at law because trade unions are organizations whose purposes are in restraint of trade.
2. The liability of trade unions in actions for damages against them for tort differs greatly as between provinces and in some provinces appears to be unrestricted.
3. The rights of trade unions under the law of picketing⁽⁹²⁾ are variously interpreted by the courts and need clarification.
4. The right of workers to form trade unions and to bargain collectively, and the right of the employer to refuse to bargain collectively with the representatives of unions, are fundamental matters that have received quite different treatment among the provinces.

(92) "The judges appear to flutter from precedent to precedent and often become involved in a web of contradictions so that it is impossible to extract lucid legal principles from their decisions." Jacob Finkelman, The Law of Picketing in Canada, University of Toronto Law Journal, Vol. II, No. 1, p.68.

References

- Canada: Trade Unions Act, 1872, R.S. 1927, c. 202.
1. Nova Scotia: Trade Union Act, 1937, c. 6.
2. New Brunswick: Labour and Industrial Relations Act, 1938, Bill 64.
3. Quebec:
- (a) Professional Syndicates Act, 1924, R.S. 1925, c. 255; 1926, c. 62; 1929, c. 70; 1930-31, c. 98; 1932, c. 87; 1934, c. 67.
 - (b) Fair Wage Act, 1937, c. 50.
 - (c) Collective Labour Agreements Act, 1938, Bill 19.
 - (d) An act to facilitate the exercise of certain rights, 1938, Bill 88.
4. Manitoba: The Strikes and Lockouts Prevention Act, 1937, c. 40.
5. Saskatchewan: The Freedom of Trade Union Association Act, 1938, c. 87.
6. Alberta: The Industrial Conciliation and Arbitration Act, 1938, c. 57.
7. British Columbia: Trade Unions Act, 1902, R.S. 1936, c. 289. Industrial Conciliation and Arbitration Act, 1937, c. 31.

Chapter 6. Legislation concerning Factory Inspection and the Enforcement of Labour Legislation

General Statement:

Most of the provincial factory laws declare it unlawful to keep a factory so that the health of any worker, or any class of worker, is likely to be injured. On the factory inspector falls the responsibility of determining whether a factory is so kept, the conditions that should be remedied, the means of remedying them and of ensuring that his orders are carried out. In most countries, the power given to the administrative authorities to make regulations concerning health and safety generally or regulations applying to women and young persons or covering certain dangerous machinery or processes has been used to establish certain standards that must be observed. The inspectors investigate to discover whether these regulations are carried out. In addition, they have general powers with regard to other matters not determined by statutory orders.

In Canada, the Lieutenant-Governor-in-Council in each province is given authority to make regulations but only in Quebec, and to a more limited extent in Ontario, have any regulations been made for the protection of workers in factories.

Labour legislation establishing minimum standards for employees depends ultimately on the efficiency of inspectors whose duty it is to see that the law is enforced. The worker may directly lodge a complaint against violations of the standards but in practice it is very easy to discriminate against him, and the type of employer who wilfully violates statutes is not usually the type to stop at discrimination against complaining employees. The lax enforcement of labour legislation is of course unfair to the employer who is observing statutory requirements and may force him into non-observance too if the industry is highly competitive.

The Royal Commission on Price Spreads, reporting in 1935, found evidence of considerable evasion of labour legislation and recommended that adequate appropriations be made for the administration of labour law, and for larger and better staffs both Dominion and provincial. The report states that:

"Even the simplest legislation is not self-enforcing; still less is labour legislation. By the very nature of the problems it is designed to meet, labour legislation must always be expertly administered by officials whose competence and understanding compel the respect and co-operation of those with whom they have to deal. The job is not simply one of detecting and punishing offences. It is primarily one of education. The factory inspector should also be the factory consultant willing and able to spread the knowledge and appreciation of better factory "house-keeping", better employment technique and better labour conditions.

Quite apart from the improvement by new legislation of legal standards of employment conditions, the first step toward better conditions is the more effective administration of those laws now on the books. There is clear evidence that many of them are not effectively enforced and cannot be made effective without some reorganization of both Dominion and Provincial enforcement agencies, with more nearly adequate appropriations and an increased personnel of higher qualifications.

In all Canada there are only 70 general factory or minimum wage inspectors of whom 16 at least have had only an elementary public school education or less, of whom none seems to have had university training. (It is not suggested, of course, that every university graduate could qualify as a factory inspector or that all factory inspectors should have a university education)....."

It was urged that consideration be given to the "possibility of giving trade associations and trade union executives in industries which were well organized and anxious to experiment with 'industrial self-government' authority to make official inspections of employment and wage conditions" with "all necessary protection against its possible abuse." Such authorized inspectors should be required to report regularly, on approved forms, to provincial Departments of Labour the number and character of their inspections and full details of any other related activities. (pp. 128-129).

The Royal Commission on the Textile Industry reporting in 1938 also found evidence of non-compliance with labour legislation. Regarding wages paid in the silk industry in

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Quebec, it quotes the Royal Commission on Price Spreads and Mass Buying to the effect that "in some natural silk mills, wage conditions were deplorable", and finds that "in spite of some improvements, this finding was applicable to the conditions in certain mills in 1936. Two companies were specifically mentioned in the Price Spreads Commission as having particularly bad records and we are bound to state that in 1936 the same companies presented among the worst wage records".⁽⁹³⁾ Reference was also made by the Textile Commission to the high temperature and humidity in cotton mills and the apparent lack of knowledge among employers and workers that regulations had been made by the Quebec Board of Health limiting the amount of moisture that might be permitted in any work-room.⁽⁹⁴⁾ It can be seen from these examples that the enforcement of labour laws leaves much to be desired.

Aside from other considerations, lack of enforcement of labour legislation has financial repercussions on the state. Non-enforcement of factory acts, for instance, may lead to early unemployability and cause workers and their families to become public charges; while the present depression has shown that evasion of minimum wage laws directly affects relief costs.

Powers, Duties and Qualifications of Inspectors:

In all of the provinces but Prince Edward Island, which has a relatively unimportant manufacturing industry, there is a factory act providing for the inspection of factories by inspectors appointed by the provincial governments in order to ensure the observance of the Act or of any regulations made under its authority. The number of inspectors that may be appointed is not specified in any act and it is a matter of continuing controversy whether or not enough inspectors are appointed properly to enforce the legislation. Especially is

(93) Report of the Royal Commission on the Textile Industry, 1938, p. 167 seq.

(94) Ibid., p. 178.

this so in times of depression when there is a pressure on business to relax standards and at the same time a pressure on governments to curtail expenditures. Table 11 shows the number of inspectors at present enforcing labour legislation in the provinces.

The powers of the inspectors are broad and in every case include the power to prosecute against an alleged offender. However, the general practice is to warn the employer at first and to explain the requirements of the law where they do not seem to have been understood. In some provinces this practice has developed into a policy of seldom prosecuting. Table 12 shows the numbers of orders for improvement, prosecutions and convictions in each province for the three years, 1935, 1936 and 1937.

In general, these tables show that most provinces do not take the same attitude to infringements of labour legislation that they do, for instance, to violations of traffic laws. This statement is true regarding adequacy of staff, willingness to prosecute and penalties for subsequent offences. There is nothing in the enforcement of labour legislation to parallel the steeply graduated penalties for recurrent offences and the cancellation of licences that exist in the enforcement of traffic laws.

The duties of the factory inspector are numerous. He must enforce the provisions of the factory acts regarding child labour, hours of work, etc. He must investigate working conditions relating to the safeguarding of machinery, protection from fire hazards and so forth. He must inspect working conditions relating to sanitation and health and provide the remedying of any condition or process that is hazardous or injurious to health. Finally, he may have the difficult duty of enforcing other labour legislation such as the minimum wage acts in some provinces.

(96) In some provinces establishments such as shops, bake-shops, restaurants or office buildings are governed by the Factory Act and it is the duty of the inspector to examine them as well.

In all the provinces the Public Health Act gives the health authorities power to inspect work-places, but in actual practice inspection seems to be left to the factory inspectors in most cases. In all the provinces but New Brunswick, the inspector may take into a factory with him a physician or health officer or sanitary officer to assist in examining sanitary conditions but this is seldom done. Here is an instance where effective co-operation between the health and labour services would be desirable.

Table 11.

Number of Inspectors Enforcing Labour Legislation,
Province by Province 1938 (a).

	<u>Factory</u>	<u>Minimum Wage</u>	<u>Other</u>	<u>Total</u>
British Columbia	{ 2 male 1 female	14 male 6 female	3	(b) 26
Alberta	4	4	1	9
Saskatchewan	3 inspectors in a composite inspection staff			3
Manitoba	8 full time and 5 part time inspectors in a composite inspection staff.			8
Ontario	26 men and 7 women in a composite inspection staff.			33
Quebec (d)				
New Brunswick	1		1	2
Nova Scotia	1	5(c)		6(c)

(a) Based on a questionnaire sent to the provinces.

(b) Includes the Assistant Deputy Minister and the Secretary of the Board of Industrial Relations who also have the status of Inspectors.

(c) There are no inspectors connected with the Minimum Wage Board but the five members of that Board have themselves the status of inspectors.

(d) Quebec did not reply to the questionnaire.

In Quebec, the Industrial Establishments Act empowered the Lieutenant-Governor-in-Council to appoint one or more sanitary physicians with special authority to supervise sanitary conditions of establishments and to carry out health regulations. Since the first appointees died or left the service,

TABLE 12

ORDERS FOR IMPROVEMENT, PROSECUTIONS AND CONVICTIONS
PROVINCE BY PROVINCE, 1935, 1936, 1937 (a)

	Year	British Columbia	Alberta	Saskat- chewan	Manitoba	Ontario	Quebec	(c)	New Brunswick	Nova Scotia
FACTORIES ACTS.										
1. Orders for Improvement	1934-35		1,638	3	408	4,851			221	110
	1935-36		1,221	10	589	6,629			214	183
	1936-37		774	27	803	5,330			188	205
2. Prosecutions	1934-35	5	3	1		11			0	0
	1935-36	9	8	0	3	4			0	0
	1936-37	6	4	0		13			0	0
3. Convictions	1934-35	4	3			8			0	0
	1935-36	9	5	0		4			0	0
	1936-37		3	0		13			0	0
MINIMUM WAGE ACTS										
1. Orders for Improvement	1934-35		394	69	1,517	1,000(b)		Not Proclaimed		0
	1935-36		615	138	1,405	2,604(b)			0	
	1936-37		800	153	1,738	1,993(b)			0	
2. Prosecutions	1934-35	48F; 20M	7	64	36	64				0
	1935-36	72F; 40M	23	35	18	46				0
	1936-37	53F; 48M	10	15	22	39				0
3. Convictions	1934-35		4		16	24				0
	1935-36	62F; 38M	20		7	14				0
	1936-37		10		21	17				0

(a) Based on information supplied by the provinces.

(b) Number of employees involved in adjustments affected.

(c) Questionnaire not answered.

no such officers have been appointed. The Act expressly states that sanitary conditions are a matter for the Provincial Board of Health, and regulations were made as early as 1895 by the Board concerning ventilation, temperature, dust, etc. As evidence of the difficulty of enforcing such regulations, the Royal Commission on the Textile Industry may be quoted regarding textile factories in Quebec (p. 151): "The most serious causes of discomfort evident in the visits made by the Commission to various textile factories were the large amount of dust present in the opening, carding and spinning rooms of the cotton mills, and the high degree of heat and humidity in the weaving rooms. In addition to these conditions, workers testified to the excessive heat which was sometimes encountered when working around some of the textile finishing machines and the presence of deleterious fumes or gases in some of the operations in the manufacture of viscose yarns In the provision of adequate changing rooms, wash rooms and eating places, many mills leave much to be desired. In many cases workers change from street to work clothes at their machines and must hang their garments on nails on the wall where they collect dust and moisture. It would seem essential that sanitary lockers and separate rooms for changing clothes should be provided in those mills which do not now possess such facilities."

In Ontario, co-operation between the Division of Industrial Hygiene of the Department of Health and the factory inspectorate is designed to supply expert knowledge to assist the labour inspectorate. A division of Industrial Hygiene has been recently created in the Quebec Ministry of Health and also in the Dominion Department of Pensions and National
(97)
Health.

(97) For details see Public Health by A. E. Grauer.

In no province are any qualifications for inspectors laid down in the Acts, but in British Columbia they are appointed under the Civil Service Act and in Saskatchewan by the Public Service Commission. As to the need of special qualifications for factory inspectors, the International Labour Conference on this point may be quoted.

International Labour Legislation

In 1923, the International Labour Conference adopted a recommendation setting out the "general principles which practice showed to be best calculated to ensure uniform, thorough and effective enforcement.....of all measures for the protection of the workers "including the functions and the powers of inspectors, their qualifications and training and the standards and methods of inspection. With regard to inspectors' qualifications it was recommended:

"that in view of the complexity of modern industrial processes and machinery, of the character of executive and administrative functions entrusted to the inspectors... and of the importance of their relations to employers and workers (and their organizations) and to judicial and local authorities, it is essential that the inspectors should in general possess a high standard of technical training and experience, should be persons of good general education and by their character and abilities be capable of acquiring the confidence of all parties.....In view of the different scientific and technical questions which arise under the conditions of modern industry in connection with processes involving the use of dangerous materials, the removal of injurious dusts and gases, the use of electrical plant and other matters, it is essential that experts having competent medical, engineering, electrical or other scientific training and experience should be employed by the State for dealing with such problems."

It was also recommended that as far as possible every establishment should be visited by an inspector for purposes of general inspection at least once a year and that certain establishments, including those in which dangerous and unhealthy processes are carried out, should be visited much more frequently.

In Canada, no province requires special qualifications for its inspectors under labour legislation. In Britain, factories are regularly inspected by medical inspectors who form part of the factory inspection staff. In some states of the United States and in western European countries special training for at least

some factory inspectors has been found essential to the proper enforcement of such legislation.

References:

1. Nova Scotia: Factories Act R.S. 1923, c.160; 1926, c.50; 1931, c.45.
2. New Brunswick: Factories Act, R.S. 1927, c.159; 1928, c.20; 1932, c.37; Factories Act, 1937, c.50 (not in force).
3. Quebec: Industrial and Commercial Establishments Act, R.S. 1925, c.182; 1926, c.14; 1926, c.67; 1930, c.80; 1930-31, c.19; 1933, c.71; 1934, c.55; 1935, cc.11, 63.
4. Ontario: Factory, Shop and Office Building Act, 1932, c.35; 1933, c.15; 1934, c.15; 1936, c.21.
5. Manitoba: Factories Act, R.S. 1913, c.70; C.A. 1924, c.70; 1927, c.17.
6. Saskatchewan: Factories Act, R.S. 1930, c.220; 1934-35, c.7; 1936, c.102.
7. Alberta: Factories Act, 1926, c.52, with amendment; 1927, c.41; 1936 (Second Session) c.8; 1937, c.62.
8. British Columbia: Factories Act, R.S. 1936, c.92; 1937, c.19.

Chapter 7. Legislation Concerning Employment Offices.

The Functions of an Employment Service.

An efficient employment service has long been regarded as an essential foundation to a smoothly functioning system of labour legislation. Its theoretical merits are many. It should save the workers incalculable time, energy and spirit in getting a job as compared with the "knocking at the door" procedure. It should allow the employer to know exactly what labour is available in a locality and what the training, experience and fitness of each worker are. Aside from the placing of workers it should be an invaluable aid to the formulation of wise policies for meeting the problems of employment. Its unparalleled opportunity to gather statistics should provide governments with exact knowledge about facts and trends in the field of labour. It should be a guide to young people in the choice of occupations to prepare for. It should be a guide to the placement of older workers in suitable occupations. It should co-ordinate seasonal employments, so important in Canada, so as to give the seasonal worker the maximum amount of annual work possible. It should aid the technologically unemployed in getting placed in rising industries, and advise as to the type of training where re-training is necessary. It is an indispensable service for the efficient administration of employment insurance. Finally, the statistics and information it gathers over a period of years might well throw new light on remedial possibilities for solving the complex problems that exist in the field of labour and employment.

International Legislation

In 1933, the Conference adopted a recommendation (No. 42) that - 1. Measures should be taken to adapt the free public employment offices to the needs of the occupations in which recourse is often had to the services of fee-charging employment agencies.

2. The principle of having specialized public employment offices for particular occupations should be applied and in so far as possible persons familiar with the characteristics, usages and customs of the occupations concerned should be attached to such offices.

3. Representatives of the organizations most representative of workers and employers in the occupations concerned should be invited to collaborate in the working of the public employment offices.

The conventions relating to unemployment and unemployment insurance have clauses referring to employment agencies.

Convention No. 2 relating to unemployment (1919) provides for a "system of free public employment agencies under the control of a central authority. Committees, which shall include representatives of employers and of workers, shall be appointed to advise on matters concerning the carrying on of these agencies."

Other conventions relating to unemployment insurance assume the existence of an efficient and nation-wide employment service.

Convention No. 9, 1920, provides for the organization and maintenance of "an efficient and adequate system of public employment offices for finding employment for seamen without charge". Such a system may be organized and maintained either;

(1) by representative associations of shipowners and seamen jointly under the control of a central authority: or

(2) in the absence of such joint action, by the state itself.

Existing Legislation

In 1918, the Dominion Parliament made provision in the Public Employment Offices Co-ordination Act for a nation-wide system of public employment offices. As this field is not within the legal competence of the Dominion government, it could not establish offices directly but had to do so with the co-operation of the provinces. This system, now the Employment Service of Canada, is made up of local employment offices in 67 cities and towns which are operated under the direction of the provincial governments, and two interprovincial clearing-houses operated by the Dominion government at Ottawa and Winnipeg for the exchange of information as to available jobs and surplus labour.

The Act provides for an annual grant of \$150,000 from the Dominion to the provinces, the distribution to be based on the amount spent on employment offices in each province. In no case may the federal grant exceed one-half of the provincial expenditure. Payments are conditional on agreements being made by the provincial governments with the Dominion Minister of Labour and approved by the Governor-in-Council. The Minister of Labour was authorized to make any regulations (not inconsistent with the Act), with the approval of the Governor-in-Council, which he considered necessary or

(99) Under an order-in-council of January 1, 1919, under the War Measures Act, the Minister was given power to set up employment offices where none was operated by the provincial governments and under this authority, offices were established in the three Maritime Provinces with an interprovincial clearing-house at Moncton for the period of demobilization after the War. These offices were closed on April 30, 1920. In the next year, Nova Scotia and in 1923 New Brunswick established their own offices in accordance with the Dominion Act.

TABLE 13.
DOMINION AND PROVINCIAL EXPENDITURES ON THE EMPLOYMENT SERVICES OF CANADA, 1927, 1929, 1934, 1936, 1937.
Thousands of Dollars

	CANADA		BRITISH COLUMBIA		ALBERTA		SASKATCHEWAN		MANITOBA	
	Provincial	Federal	Provincial	Federal	Provincial	Federal	Provincial	Federal	Provincial	Federal
1936-37	342	150	33	15	25	11	29	13	24	10
1935-36	327	150	30	14	25	12	28	13	21	10
1933-34	325	150	27	12	25	12	30	14	21	10
1928-29	297	150	39	20	26	13	37	19	25	13
1926-27	281	150	37	20	25	13	36	19	24	13

	ONTARIO		QUEBEC		NEW BRUNSWICK		NOVA SCOTIA	
	Provincial	Federal	Provincial	Federal	Provincial	Federal	Provincial	Federal
1936-37	141	62	71	31	9	4	9	4
1935-36	135	62	70	32	10	4	9	4
1933-34	138	63	67	31	8	4	9	4
1928-29	122	61	33	16	8	4	8	4
1926-27	114	61	30	16	8	4	7	4

(a) Based on figures of the Employment Service Branch of the Dominion Department of Labour.

convenient for carrying out the Act. Table 13 shows provincial expenditures and the amount of the Dominion subvention for each province over a period of years.

In addition to the payment of funds directly to the provinces and the operation of clearing-houses, the Minister of Labour is permitted, under the Act, to aid and encourage the formation of public employment offices, promote uniform methods in their administration, establish a system of inspection for them, and compile and disseminate information concerning employment conditions. Any firm or person requested to do so must furnish to the Minister of Labour any information necessary for the purposes of the Act. The appointment of staff and the administration of the service, however, are in the hands of the provinces.

In all the provinces but Prince Edward Island, there is legislation providing for public employment offices and agreements are in effect between the provincial governments and the Dominion under the Employment Offices Co-ordination Act. At the present time, there are three offices in Nova Scotia, four in New Brunswick, ten in Quebec, twenty-eight in Ontario, two in Manitoba, seven in Saskatchewan, five in Alberta and eight in British Columbia. In Halifax, Quebec, Montreal, Ottawa, Saskatoon, Calgary, Edmonton and Victoria, separate offices are maintained for men and women.

The Employment Service Council of Canada was established as an advisory council to assist in the administration of the Act and to recommend ways of preventing unemployment. The regulations under the Act provide that it shall be made up of one member appointed by each provincial government, two appointed by the Canadian Manufacturers' Association and two by the Trades and Labour Congress, one appointed by the Railway Association of Canada and one by the railway brotherhoods, one by the

Canadian Lumbermen's Association and two by the Canadian Council of Agriculture, three persons appointed by the Department of Labour, two of whom were to be women, one representative of the returned soldiers and one appointed by the Department of Soldiers' Civil Re-establishment. The members of the Council were to hold office for three years but be eligible for re-appointment.

Provincial advisory councils were to be set up in each province constituted of equal numbers of employers and employees. Their functions were to safeguard the interest of employers and employees, to direct the policy of the local advisory committees and to co-operate with the Employment Service of Canada.

Local advisory committees consisting of equal numbers of persons representing employers and employed in the city or town were to be established by the provincial government wherever deemed advisable. These committees were to give general assistance to the superintendent of the local employment offices and to co-operate with the provincial advisory committees in applying the national policy regarding public employment offices.

Annual meetings were held by the Employment Service Council of Canada from 1919 to 1930 except in 1926. Since 1930 the Council has not met.

In Alberta, Manitoba and Ontario, legislation was enacted to provide for a provincial advisory council; while Saskatchewan had already organized a provincial council. Other provinces did not establish councils; and the councils that had been organized soon became inactive. As very few local advisory committees were set up, the whole system of advisory councils has proven abortive.

Private Employment Offices

Private employment services came into general disrepute

in all countries because of their abuses and deficiencies. Their abuses revolved chiefly about the fact that they were interested in making as large an income as possible and hence not only were fees in many cases exorbitant but practices were developed, often in collusion with foremen, to ensure a high rate of labour turnover so that the offices would have a larger number of placements to make. Their deficiencies centred chiefly on their essentially local nature and hence poor coverage, and their lack of interest in any other function of employment offices than job-placement. So general was the feeling against private employment offices that an international convention was adopted in 1933 (No.34) abolishing fee-charging employment agencies conducted with a view to private profit. In Canada, all the provinces except Ontario and New Brunswick substantially implement this convention. In Ontario private employment offices may be operated under licence. Maximum fees chargeable for services are fixed or may be fixed by regulation, and monthly returns must be made to the provincial government.

Legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia prohibits private fee-charging employment agencies, but in Nova Scotia exceptions may be made by the government. In Saskatchewan, the only private agencies permitted are those filling positions in educational institutions. In British Columbia, employment agencies that do not charge fees may be operated but records must be kept and reports made to the provincial authorities. In Quebec, bureaux may be maintained by religious and charitable societies and workers' organizations but a permit must be obtained from the Minister of Labour in each case and no fees may be charged the workers.

The Functioning of the Present System

The record of the Employment Service as at present constituted shows that of all the functions such a service might perform, it has restricted itself to the placement of workers. Furthermore, it has touched only a part of this field. Table 14 shows the regular placements made by the Employment Service over a period of years.

TABLE 14

REGULAR PLACEMENTS MADE BY THE EMPLOYMENT SERVICE OF
CANADA IN 1926, 1929, 1933, and 1937 (a)

		CANADA	BRITISH COLUMBIA	ALBERTA	SASKATCHEWAN
Manufacturing	1937	7,775	386	495	120
	1933	4,413	136	174	126
	1929	27,125	2,968	2,198	632
	1926	20,103	3,250	1,381	328
Logging, Fishing & Hunting	1937	27,844	3,353	1,666	470
	1933	7,753	551	796	114
	1929	36,080	5,409	3,125	1,194
	1926	36,024	4,395	2,335	2,508
Farming	1937	63,649	1,777	11,782	19,388
	1933	52,154	1,016	13,205	19,386
	1929	139,722	14,634	36,003	56,973
	1926	141,807	11,742	35,850	63,697
Mining	1937	1,836	496	457	16
	1933	725	154	297	134
	1929	4,027	1,212	1,259	151
	1926	3,392	915	1,349	104
Communication & Transportation	1937	675	38	158	19
	1933	390	18	27	56
	1929	4,906	335	414	388
	1926	5,000	395	223	153
Construction & Maintenance	1937	65,500	6,607	4,373	2,250
	1933	41,452	12,359	3,965	2,141
	1929	65,454	5,661	7,769	6,139
	1926	52,609	6,296	5,377	4,243
Service	1937	57,286	3,430	3,883	5,564
	1933	43,465	2,263	3,470	5,037
	1929	52,823	4,922	5,039	7,523
	1926	45,665	4,787	5,151	4,624
Trade and Finance	1937	1,953	79	79	33
	1933	2,239	89	80	59
	1929	4,900	333	330	186
	1926	3,496	242	324	94
All Industries	1937	226,518	16,166	22,893	27,860
	1933	152,591	16,586	22,012	27,053
	1929	335,037	35,474	56,137	73,186
	1926	308,096	32,022	51,990	75,751

(a) Based on annual reports of the Employment Service Branch of the Department of Labour, Ottawa.

TABLE 14 (Cont'd)

REGULAR PLACEMENTS MADE BY THE EMPLOYMENT SERVICE OF
CANADA IN 1926, 1929, 1933, and 1937 (a)

		MANITOBA	ONTARIO	QUEBEC	NEW BRUNSWICK	NOVA SCOTIA
Manufacturing						
	1937	81	5,040	1,387	51	215
	1933	165	2,743	998	40	31
	1929	527	18,371	1,797	147	485
	1926	581	11,928	1,728	322	585
Logging, Fish- ing & Hunting						
	1937	1,782	13,173	6,477	307	616
	1933	579	4,782	848	66	17
	1929	2,930	15,814	6,645	483	480
	1926	4,900	15,431	4,574	612	1,269
Farming						
	1937	17,345	12,327	830	70	130
	1933	11,237	6,877	338	52	43
	1929	20,375	10,513	878	146	200
	1926	17,469	12,052	625	130	242
Mining						
	1937	128	688	32	13	6
	1933	13	88	36	-	3
	1929	170	1,099	73	59	4
	1926	17	898	33	41	35
Communication & Transporta- tion						
	1937	10	400	36	7	7
	1933	10	189	43	44	3
	1929	274	2,663	527	205	100
	1926	245	3,283	479	156	66
Construction & Maintenance						
	1937	4,794	17,997	27,622	739	1,118
	1933	5,842	13,244	2,218	556	1,129
	1929	4,219	31,523	8,668	1,111	364
	1926	1,751	28,138	5,691	459	654
Services						
	1937	4,553	18,242	19,469	1,089	1,056
	1933	4,786	15,915	10,565	684	745
	1929	7,307	19,126	7,090	1,083	733
	1926	6,659	14,659	7,763	1,196	826
Trade & Finance						
	1937	62	1,026	648	7	19
	1933	76	1,176	710	14	35
	1929	555	2,739	599	87	71
	1926	346	1,612	673	122	83
All Industries						
	1937	28,755	68,893	56,501	2,283	3,167
	1933	22,708	45,014	15,756	1,456	2,006
	1929	36,357	101,848	26,277	3,321	2,437
	1926	31,968	88,001	21,566	3,038	3,760

It can be seen that the placements are concentrated in the fields of farming, construction and domestic service. Business establishments, on the whole, use the service very little.

Table 15

Total Number of Placements made by the British Labour Exchanges and the Employment Service of Canada for the years 1922 to 1937 inclusive. (a)

<u>Year</u>	<u>Great Britain</u>	<u>Canada</u>
1922	717,550	393,522
1923	922,179	462,552
1924	1,175,187	366,132
1925	1,316,621	412,825
1926	1,123,638	410,155
1927	1,251,511	414,769
1928	1,327,306	470,328
1929	1,556,271	398,367
1930	1,732,144	368,679
1931	1,952,057	471,508
1932	1,855,841	352,214
1933	2,201,028	352,097
1934	2,305,262	406,091
1935	2,515,391	353,802
1936	2,624,213	331,450
1937	2,624,978	389,536

(a) Figures from the Dominion Department of Labour. Casual as well as regular placements are included.

Table 15 gives the total number of placements made by the British Labour Exchanges and the Employment Service of Canada for the years 1922 to 1937 inclusive. It can be seen how the British placements picked up markedly with reviving business conditions, while the Canadian placements have remained substantially the same over the whole period. The British system, in short, is integrated much more closely with business than the Canadian.

It is difficult to see how any other than a federal Employment Service could deal effectively with the major shifts in employment to which this country is prone. The problems caused by the Great War and crop failures were met inadequately, a result that was almost inevitable under the existing organization of the Employment Service. The constant interprovincial migration caused by the highly seasonal character of the Canadian economy

cannot be handled efficiently on a provincial basis. There are, furthermore, persistent charges that provincial services discriminate against workers from other provinces. Where international migration or the possibility of it exists, the matter again could only be handled by a Dominion service. (100)

The conclusion follows that the system of divided authority that obtains in Canada is not conducive to the development of an efficient service of the type that would fill the needs of the Canadian situation. (101) The investigations of the National Employment Commission led it to the conclusion that there should be a federal Employment Service and its recommendations on the subject may be quoted with approval: (102)

"Early in the Commission's investigations it became evident that the first and most vital step necessary to the successful handling of employment, re-employment and Aid administration problems is the development of more efficient Employment Services throughout Canada. The present Provincial Employment Services are in practice unfitted to meet the exigencies of the situation. Divided responsibilities and diversity of aims between different Provinces; unequal development as regards numbers, types and functions of local offices; unsuitable locations of premises; defects in Provincial boundaries when used as economic administrative units, etc., have all tended to result in the Provincial Employment Services not being utilized fully either by employer or by employee.

"The provision of a proper link between employer and employee; of local advisory councils supplementary to local Employment Service offices in order to provide focal points for attacks on local problems; of means

(100) Instead of sending seasonal labour east and west across country, in many instances it might be advisable for labour to move north and south across the boundary line especially under conditions where speed and economy were essential.

(101) As the National Employment Commission says, (Information Service, No. 5, November 1937), "It should be noted that the present employment service has done good work. Great credit is due to those operating the service for the effort made to produce results with a machine which, due largely to divided authority, is inadequate and unsuited to conditions in Canada. Given such a machine it is hardly to be wondered at that the surface has only been scratched".

(102) Interim Report of the National Employment Commission, p. 17.

for gauging the relative degree of employability of those in receipt of Aid, are of pre-eminent importance if any real progress is to be achieved in handling unemployment problems. Indeed this is the experience of other countries also.

"Bearing in mind the desirability of uniformity of practice where financial Aid for the Dominion is in question; of freedom from local pressure in administration; of a Dominion source of local information independent of Province or Municipality in respect to unemployment assistance etc., the Commission recommended in August, 1936, that the Employment Service be administered nationally. In any case the situation requires increased and improved service which will cost more, but it is recognized that national administration in itself would not add anything to the total cost to the country as a whole. The Commission, however, believes the extra cost to the Dominion Government of the transfer from the Provinces would be more than offset by efficiencies and, therefore, economies which would result."

Chapter 8. Conditional Grants in the Field of Labour:
Employment Service.

As compared with conditional grants in public health, conditional grants for an employment service labour under an initial handicap. It is commonly admitted that public health can best be administered on a provincial and local basis, whereas both analysis and experience go to prove that an employment service can most efficiently and economically be administered nationally. (103) There is no functional basis for divided authority in this field; the division is purely a constitutional one.

To overcome this handicap and allow for an effective organization, the field of employment service must be one favourable to close integration between the two governmental administrations and unanimity as to objectives. As far as the latter is concerned, there appears to be a definite tendency for present services to concentrate on the most obvious of the functions of an employment service, the placing of workers. It is here that political advantages accrue and "there has been no little criticism of the fact that political influence is effective in securing jobs through the Employment Service". (104) This fact in itself would tend to undermine possibilities for unanimity regarding objectives, but even were it not so, one needs only glance over the broader functions of an employment service as outlined at the beginning of Chapter 7 to see how unsatisfactory the provincial basis has been for realizing them. The planning that is needed for coping with technological unemployment and re-training, for guiding young workers into occupations where a demand exists and fitting old workers into

(103) The general organization of the employment service in Canada and an analysis of its functioning has been given in Chapter 7.

(104) Luella Gettys, "The Administration of Canadian Conditional Grants," p. 62.

available niches; the interprovincial scope that is necessary for co-ordinating seasonal employment to give the seasonal worker the maximum amount of work annually; the national authority that is needed for guiding international movements of labour; all this is beyond the individual province. The tendency for the present services to stress the immediate placing of workers is therefore simply following the easiest course of action.

It is apparent that divided authority in the field of employment service is not conducive to the carrying out of broader objectives. Is it at any rate favourable to close working arrangements between the two jurisdictions either for the efficient achievement of more limited objectives or for the co-ordinating and influencing of provincial policies along broader lines? The Dominion has three possible courses of action here, control, example or drift. They would probably be combined in any policy, but there is room for an essential difference of emphasis.

The regulations under the Employment Offices Co-ordination Act, 1918, gave the federal Department of Labour quite extensive powers of supervision and control. It was to establish clearing houses, promote uniformity of methods in the various offices, establish a system of inspection, supply the forms used by the employment offices, require financial and statistical reports from the provinces, and pay the provincial governments the amount due them upon compliance with the prescribed regulations. The powers to inspect, to require reports and to withhold grants unless specified conditions were complied with, appear to give all the authority necessary for effective administrative control. During the early years of the grant it seemed that the Dominion meant to make use of its controls, but gradually Dominion supervision has come to mean little else but audit control. Dominion inspection was dropped and

there has been no attempt to use the power to withhold grants.
(105)
The Employment Service Council which might have been developed into an authoritative body which could have wielded great influence with the provinces, was also allowed to lapse. What is the explanation for these developments? In essence, the explanation is two-fold: first, the Dominion government does not dare use its power of withholding grants because of the political repercussions which might result; second, political considerations relating to provincial autonomy impinge on the administrative field and make Dominion administrative control impossible. The first point is clear, but the second needs further explanation. The provincial employment personnel is appointed by and responsible to a provincial Cabinet Minister. Dealings between the two administrative staffs as such are therefore impossible, except on minor points; on any major point the matter becomes one of dealing between provincial and Dominion Cabinet Ministers, that is, it becomes a political matter coloured by all the political currents of the day. (106) And, as in the last analysis, the provinces have jurisdiction over labour legislation under the British North America Act, the Dominion has been very wary of taking the initiative lest it be accused of dictatorial action and infringing on provincial rights. The Employment Service Branch of the Dominion Department of Labour, therefore has come to adopt merely the negative role of preventing violation of the regulations. It does not attempt, for

(105) This is an advisory body provided for by Order in Council of December 17, 1918, and including among others, representatives of the provincial governments, the Canadian Manufacturers' Association and labour organizations. It last met in 1930.

(106) It should be noted that the field of public health is much less open to these difficulties than the field of labour. It is a more technical field in which there is a great measure of professional agreement regarding the desirable course of action regarding its problems. There is a better basis than in labour, therefore, for co-operation on the administrative level. Similarly, as there are accepted standards in the field, deficiencies; when they occur, are more apparent and less excusable. Finally, because of its technical nature and the fact that it does not lend itself to the granting of "favours", it is less open to political abuses than the field of labour.

instance, to influence the important matter of the personnel of the employment offices, as envisaged in the original plan. Appointments are made by the provincial governments, and any control by the federal office would be a denial of the principle of ministerial responsibility. Thus the Employment Service Branch is in practice unable to discipline provincial staffs for failure to comply with its recommendations.

Since the seemingly strong powers of the Dominion Employment Service Branch under the Minister of Labour are nullified by political considerations, central leadership cannot be secured through the ordinary channels of administrative control. The only other means of achieving leadership is through what we have earlier termed "example". For this, an extended Employment Service Branch with an outstanding personnel would be required. A well equipped staff to carry out significant research projects, surveys and educational work could do much to provide leadership in bringing about changes of a constructive nature. For this line of policy, the inspection service, instead of being abandoned, should have been retained and perhaps extended, providing that highly qualified inspectors were appointed who could gain the confidence of the local employment officers. Though lacking coercive authority, such a qualified peripatetic inspectorate, backed up by central leadership and research, might well have made itself indispensable to the provincial services. However, as the Dominion did not appropriate sufficient funds for a policy of "example", it would appear that the weaknesses of divided administration in this field were regarded as too great for such a policy to overcome.

As a result, the Dominion has fallen into the third course, that of drift. It puts up funds and allows the provinces to run the employment offices and formulate policies pretty well as they please as long as they satisfy a straightforward audit control. The trouble with this policy is that it does not

produce the desired results.

The conditional grant in the field of employment service cannot, therefore, be said to have been a success. It did achieve its first objective, the framework of an employment service of national coverage, but it did not achieve its second aim of developing a service that would efficiently and effectively meet the employment problems of Canada. (107)

(107) This conclusion concurs with those of the National Employment Commission and Luella Gettys, "The Administration of Canadian Conditional Grants", who says "the explanation of the unsatisfactory state of affairs (in the Employment Service of Canada) does not lie in the present personnel of the Dominion Service or its limited funds but in the more fundamental factors which condition Dominion-provincial relationships and which lead almost always to a weak Dominion control, with the center of gravity definitely in the provinces". p. 63.

Chapter 9. Legislation Providing for Conciliation and Arbitration in Industrial Disputes.

Introduction

The purpose of legislation for conciliation and arbitration is, of course, to preserve industrial peace.⁽¹⁰⁸⁾ Both sides usually lose by industrial warfare and often the ordinary citizen is seriously inconvenienced. The state, therefore, is interested in providing facilities for the peaceful settlement of disputes. There are four recognized methods of doing this, (1) mediation or conciliation; (2) compulsory investigation; (3) voluntary arbitration; (4) compulsory arbitration. The first method merely provides for a mediator who, without compulsory powers, brings together representatives of the workers and employer(s) for discussion and negotiation. If the negotiations break down, the state does not use its compulsory powers to prevent a strike or lock-out. Under the second method, a special board with power to investigate the dispute and summon witnesses, etc., on the request of one or both of the disputants or on the government's initiative, is set up. The board is required to report to the government but its recommendations need not be accepted by the disputants. Public opinion is counted upon to influence the disputants to accept the recommendations. The only compulsory aspect is the postponement of the strike or lock-out until the board has investigated. This is the essential feature of the Dominion Industrial Disputes Investigation Act. But boards established under this Act are boards of conciliation and investigation. Their first duty is to try to bring the parties together. Failing a settlement

(108) See Table 10 for statistics regarding strikes in Canada.

by this means they proceed to investigation. Compulsory investigation along with mediation or conciliation are the means commonly used in Canada. Voluntary arbitration occurs when both parties voluntarily agree to submit their dispute to an arbitrator and to abide by his decision whatever it may be. Compulsory arbitration exists when legislation compels both parties to submit their dispute to an arbitrator or board of arbitration, and to accept the resulting award. There are provisions for voluntary arbitration in some of the Canadian (109) legislation but compulsory arbitration exists nowhere in Canada. Both employers and employees have opposed the principle of compulsion. This is true of most other countries too. It is only in New Zealand and Australia that an important development of compulsory arbitration has taken place. Compulsory arbitration necessarily involves a great extension of state powers and state machinery in the field of labour legislation.

Legislation for conciliation and arbitration is concerned with the technique of maintaining industrial peace. But all labour legislation, e.g. regarding wages, working conditions, the recognition of unions, etc., is interested in bringing about the basic conditions that make industrial peace possible.

(109) In 1888, Nova Scotia passed a 'Miners' Arbitration Act providing for compulsory arbitration. With some changes, the Act was re-enacted in 1890 but only one case appears to have been dealt with under it. In 1903, the Legislature of Nova Scotia passed an Act based on the English Conciliation Act of 1896. Both statutes were repealed by the Industrial Peace Act of 1925. This statute was based on the Industrial Disputes Investigation Act but provision was also made for arbitration where conciliation failed; however, this part of the statute was never proclaimed in effect. In 1926, the Industrial Peace Act was repealed.

A. Dominion Legislation

Conciliation Act.

Provincial legislation preceded Dominion legislation in this field but as the early provincial legislation proved abortive, the Dominion Parliament enacted a Conciliation Act in 1900 based on the English statute of 1896.⁽¹¹⁰⁾ This Act gave no compulsory powers but provided that the Minister of Labour could inquire into the cause of any dispute, arrange for a conference between the parties, appoint a conciliator or board of conciliation at the request of either party or appoint an arbitrator on the application of both parties. There has been no request for arbitrators under this statute.

Railway Labour Disputes Act.

This Act was passed in 1903, authorizing the Minister of Labour to appoint a committee of conciliation, mediation and investigation on the application of either party to a dispute involving railway employees, or at the request of the municipality, or of his own motion. If one of the parties refused to nominate a member for a committee of conciliation, the Minister could make the appointment without nomination. Failing agreement by a conciliation committee, the Minister could refer the matter to an arbitration board with power to compel the attendance of witnesses, the production of documents and the taking of

(110) The earliest enactment was an Act of the Ontario Legislature in 1873, but no proceedings were taken under it. In Ontario and British Columbia in 1894 and in Quebec in 1901, statutes were passed for the prevention and settlement of industrial disputes which were based on the New South Wales Act of 1892. The British Columbia statute was repealed as obsolete in 1922 and that of Ontario in 1932. The Quebec statute is still on the statute books and proceedings are reported under it from time to time. For a full account of early legislation see Government Intervention in Labour Disputes in Canada, Bulletin No.11, Industrial Relations Series, Ottawa, 1931.

evidence under oath. The report of the arbitration board was to be published in the Labour Gazette but either disputant could reject the award. Public opinion was thus counted on to induce the parties to settle their differences. The provision for committees of conciliation, mediation and investigation in this Act was used only once before 1907 when the Industrial Disputes Investigation Act was passed. Since 1907, it has been used on three occasions involving government railways.

Conciliation and Labour Act

In 1906 the Conciliation Act and Railway Labour Disputes Act were consolidated as the Conciliation and Labour Act.

Industrial Disputes Investigation Act

In 1907, the Industrial Disputes Investigation Act, was passed. Its enactment followed a strike of coal miners in Alberta which caused a serious shortage of fuel in the Prairie Provinces. The provisions of the Act, with one exception were limited to disputes involving employers of ten or more persons engaged in the operation of mines, steam, electric and other railways, steamships, telegraph and telephone lines, gas, electric light, water and power works. The Act thus applied both to interprovincial businesses like railways which were under Dominion jurisdiction and businesses like public utilities which were not.

In all these industries, the Act of 1907 makes it unlawful for an employer to lock out his employees or for workmen to strike prior to or during a reference of the dispute to a board of conciliation and investigation. As amended, the Act provides that a board of three members, may be appointed by the Minister of Labour on the

application of either of the parties to the dispute, at the request of any municipality concerned or of his own motion. If one party refuses to nominate a representative on the board, the Minister may make the appointment without nomination and if the employers' and workers' representatives fail to agree on the nomination of a chairman, the Minister may appoint a chairman. Employers and employees must give thirty days' notice of any intended change as to wages or hours and if such change results in a dispute neither party may alter the condition as to wages or hours until a board has reported on the points at issue.

It is also provided in the Act that if in any industry, other than one to which the Act directly applies, both parties to a dispute consent to the appointment of a board of conciliation and investigation, the Minister may appoint such a board.

In 1923, a board was appointed under the Industrial Disputes Investigation Act to deal with a dispute between the Toronto Electric Commissioners and their employees. When the Commissioners refused to nominate a representative on the board, one was appointed by the Minister of Labour. The Toronto Electric Commissioners, thereupon, challenged the validity of the statute in its application to employees of a provincial or municipal authority and the point was finally settled against the Dominion in January, 1925, by the Judicial Committee of the Privy Council.

In March, 1925, the Act was amended: (1) to restrict its scope to labour disputes in connection with works clearly within Dominion jurisdiction, and (2) to enable it to be applied to disputes within the legislative jurisdiction of any province on the enactment of a statute by the legislature declaring such disputes subject to the Dominion Act. Without restricting the general nature of the terms

declaring the Act to apply to undertakings within Dominion jurisdiction, it was expressly stated that the Act covered works in connection with navigation and shipping, railways, canals, telegraphs and other works connecting one province with another, or extending beyond the bounds of any one province, works carried on by aliens or by companies incorporated under Dominion authority or undertakings declared by the Parliament of Canada to be for the general advantage of the country as a whole or of two or more provinces.

Following these amendments in 1925, all the provincial legislatures but that of Prince Edward Island, enacted legislation bringing the Industrial Disputes Investigation Act into operation within their boundaries. British Columbia has since repealed this enabling legislation because of doubtful validity and alleged delays.

The record of conciliation under the Industrial Disputes Investigation Act has been a very good one. Out of 866 applications for boards from 1907 to March 31, 1937, only 39 cases resulted in strikes or the continuance of the dispute. Table 16 shows the details of this record.

Table 16

Conciliation Record of the Industrial Disputes
Investigation Act from March 22, 1907, to
March 31, 1937. (a)

<u>Industries Affected</u>	<u>Number of applica- tions for boards</u>	<u>Number of strikes not averted or ended.</u>
I. Disputes affecting mines, transporta- tion and communication, other public utilities, and war work:-		
(1) Mining and Smelting Industry -		
Coal	95	12
Metal	21	5
Asbestos	1	0
(2) Transportation and Communication -		
Steam railways	246	7
Street and electric railways	148	7
Motor transportation	3	0
Express	13	1
Shipping	56	0
Telegraphs	34	1
Telephones	10	0
(3) Miscellaneous -		
Light and power	45	3
Elevators	1	0
(4) War Work	30	1
II. Disputes not falling clearly within the direct scope of the Act	163	2
<u>Total</u>	<u>866</u>	<u>39</u>

(a) Annual Report of the Dominion Department of Labour
1937, p.45.

B. Provincial Legislation

Ontario.

In 1906, the Municipal Board Act, as it is now called, was enacted giving to the Board power to investigate and determine matters in dispute between any electric or steam railway company or public utility authority and its employees when requested to do so. The Board may intervene as mediator in case of a threatened strike, and where mediation fails, it may make an investigation and publish its findings.

Manitoba.

The Industrial Conditions Act, providing for a joint council of industry of five members, was passed in 1919 shortly before the Winnipeg general strike. This council was to act as a board of arbitration at the request of both parties to an industrial dispute. The Act was amended in 1920 and reports of the council show a considerable number of disputes dealt with by conciliation and eleven cases by arbitration but in 1922 the Legislature so reduced the appropriation that the Act became inoperative.

In 1937 the Industrial Conditions Act was repealed by the Strikes and Lockouts Prevention Act modelled on the Industrial Disputes Investigation Act. The Act applies to labour disputes involving employers of ten or more workers who are not subject to the Industrial Disputes Investigation Act, but does not apply to domestic service and agriculture. Once application for a board of conciliation has been made, a strike or lockout is prohibited until the application has been refused or the report of the board has been delivered to both parties. The findings of the board are not binding on the parties, unless they previously agree to be bound.

Quebec.

The Trade Disputes Act (R.S. 1925) was enacted in 1901 and amended in 1903 and 1909. A Registrar of Councils of Conciliation and Arbitration is provided for who, on the application of either or both parties to a dispute involving at least ten workers in the same business, convenes a council of conciliation consisting

of four conciliators two of whom are appointed by each party. If this council cannot settle the dispute, either party may then call upon the registrar to refer the dispute to a Council of Arbitration, consisting of one nominee of the employer(s), one of the workers and a third to be chosen by these two, or, in case of their disagreement, to be appointed by the Minister. The award must be made within one month and is published in the Quebec Official Gazette, on the request of either party and the approval of the council, but it is not binding unless the parties have so agreed in writing. The registrar also has certain powers as a sole mediator where a dispute "exists or is apprehended".

In 1921, following unrest among certain classes of municipal employees, the Municipal Strike and Lockout Act was passed by the Quebec Legislature. It applies to disputes between municipal authorities and policemen, firemen, water-works employees or men employed in connection with the disposal of garbage where there are at least 25 persons in any of these classes and where the dispute involves a question of wages, hours or discrimination against trade unionists. Strikes and lockouts are prohibited before reference to a board of arbitration but the awards of boards of arbitration are not enforceable at law.

The Fair Wage Act, 1937, of Quebec empowers the Fair Wage Board, with the approval of the Lieutenant-Governor-in-Council, to organize a conciliation committee representing equally employers and employed with a chairman nominated by the Fair Wage Board. The conciliation committee is charged with the duty of hearing the representatives of the persons interested with a view to bringing them to an agreement on fair working conditions and to reporting its conclusions to the Fair Wage Board.

Alberta.

In Alberta, as in Nova Scotia, while the Industrial Disputes Investigation Act was before the courts, there was some agitation for the enactment of a law for the settlement of labour disputes. In 1926, the Alberta Labour Disputes Act, modelled on the Industrial Disputes Investigation Act except that it does not prohibit strikes and lockouts, was passed and made applicable to all industries. In 1928, when the Alberta Legislature made the Industrial Disputes Investigation Act applicable to such disputes as were within the scope of the Act and within provincial jurisdiction, the Labour Disputes Act was amended to restrict it to disputes not within the Dominion Act, that is, to disputes in industries other than mines or public utilities as defined in the Act. The 1926 statute however has now been repealed by the Industrial Conciliation and Arbitration Act, 1938, which makes similar provision to that of the British Columbia statute of 1937 described below. The Alberta Act applies to all disputes within the jurisdiction of the Province but it does not repeal the Act of 1928 enabling the application of the Dominion Industrial Disputes Investigation Act to disputes within provincial jurisdiction.

British Columbia.

The Industrial Conciliation and Arbitration Act of 1937 repeals the Industrial Disputes Investigation (British Columbia) Act. The feeling was that the Dominion boards took too long to bring in their findings. The British Columbia statute provides for the appointment of a Conciliation Commissioner on application of either party to a dispute or directly by the Minister "whenever any dispute exists or is apprehended." Once a Conciliation Commissioner is appointed the Minister may subsequently refer to him any other dispute of a similar kind. The Commissioner must file

his report within fourteen days unless all the parties agree to extend the time. Where conciliation fails the Minister must refer the dispute to a Board of three arbitrators, one appointed by each of the disputants and the third appointed by these two. Only British subjects may be appointed arbitrators. The same limitations of time are imposed on the Board as on the Commissioner. The award of the Board may be rejected by either party to the dispute provided only that the question of acceptance or rejection shall be decided by a vote (secret ballot). After application has been made for the appointment of a Conciliation Commissioner⁽¹¹²⁾ and until fourteen days after the taking of the vote, all lockouts or strikes are prohibited. But in case of disputes concerning wages and hours, no employer may make effective a proposed change in wages or hours without the consent of the employees nor may there be a strike or lockout before application is made for the appointment of a Conciliation Commissioner. The onus of making the application is on the party proposing the change.

New Brunswick.

Part Four of The Labour and Industrial Relations Act, 1938, deals with "Investigation and Conciliation of Disputes". On the application of either party to a dispute the Minister may appoint a Conciliation Commissioner within seven days of the application. The Minister may of his own initiative appoint a Commissioner "whenever any dispute exists or is apprehended" and may subsequently refer to him any other dispute of a similar kind between any other employer and his employees. If the Commissioner is unable to make a settlement, the Minister must refer the matter to

(112) The Alberta statute of 1938 adds the further qualification that members of boards must have resided in Alberta for three years.

a Board of Conciliation consisting of three members, a nominee of the employers, a nominee of the employees and a third chosen by these two. The Minister is empowered to make an appointment where either of the disputants does not do so. All appointees must be British subjects and resident in New Brunswick. The Board may by summons require the appearance of any person and the production of any documents etc. A maximum penalty of \$200 or, in default of payment, imprisonment for 60 days is provided. Within 20 days the Board is required to make its report to the Minister but the disputants may only accept or reject it after a vote by secret ballot. Lockouts and strikes are prohibited unless the matter has been referred to a Board of Conciliation or has been dealt with by the Fair Wage Board.

Over-lapping of Conciliation Services.

The organization for conciliation in labour disputes in Canada provides a striking example of over-lapping of the services of the Dominion and provincial governments made possible by the constitutional division of functions. The field in which the Dominion could take any action involving coercion was quite restricted constitutionally. In the broader fields of voluntary conciliation, it was willing to give the services of its conciliation officers if requested but it adopted the policy of not proffering its services, and with increasing industrial unrest as employment increased and prices rose, several of the provincial governments have found it advisable to make definite provision for conciliation services.

The question arises as to whether this over-lapping is desirable and conducive to efficiency in administration.

The chief argument advanced in favour of the existing situation is that a provincial conciliation service, forming

part of a department enforcing labour laws, is closer to the immediate problems of labour and industry within the province and that especially with respect to the many purely local disputes it can more effectively and expeditiously do the work of conciliation. The weight of this argument has presumably increased with the marked increase in recent years of provincial legislation dealing with labour conditions in considerable, and frequently varying, detail. In many cases, access to the Minister is of prime importance for an immediate and peaceful settlement of the dispute, and access is quicker and easier in the provincial sphere.

The chief arguments advanced in favour of one conciliation service handling all industrial disputes are, first, that divided jurisdiction opens up unpleasant possibilities for dissatisfaction among employers and employees and friction as between governments. Whichever side feels dissatisfied with a report made by a board may be inclined to feel that the decision would have resulted differently if application had been made for the other conciliation service. In different disputes of much the same type, different services may have been consulted with different results, again causing dissatisfaction. Further, one side to a dispute may wish to call in the Dominion service, the other, the provincial service. It may even happen that both services are called in, and it is here that opportunities for intergovernmental friction arise. (113) Second, there is a certain duplication of expenses, etc. Third, an effective conciliation service requires a high type of officer and conciliation is an art the practice of which improves with experience, and therefore one carefully chosen service handling

(113) The strike of coal miners in Minto, New Brunswick, in 1937 illustrates these two points. The Provincial conciliation service dealt with the situation for some time but its actions were not agreeable to the United Mine Workers who asked the Dominion Department of Labour to appoint a conciliation board under the Industrial Disputes Investigation Act. This request was granted, an action that was a "great disappointment" to the Attorney-General of New Brunswick.
(See The Gazette, Montreal, Dec.17, 1937).

all industrial disputes would be the most efficient form of organization. Fourth, one unified system would have a greater opportunity of diversifying its personnel so as to include officers with a special technical knowledge of processes in given industries as well as a knowledge of local conditions. Dominion officers with knowledge of conditions in all provinces would be better qualified to handle disputes in any one province, particularly in industries which are found in two or more provinces. Fifth, industries not clearly within Dominion jurisdiction but operating separately in more than one province, may have interprovincial ramifications through the existence of trade unions, employers' associations or ultimate unified control by financial interests over the various operating companies. Under such conditions, different action by provincial services, especially where a dispute is going on simultaneously in two or more provinces, may cause economic dislocations in the industry.

References.

1. Canada - Conciliation and Labour Act, R.S. 1927, c.110; Industrial Disputes Investigation Act, R.S. 1927, c.112.
2. New Brunswick - Labour and Industrial Relations Act, 1938.
3. Quebec - Trades Disputes Act, R.S.1925, c.97; Municipal Strike and Lockout Act, R.S. 1925, c.98; Fair Wage Act, 1937, c.50.
4. Ontario - Municipal Board Act, 1932, c.27.
5. Manitoba - Strikes and Lockouts Prevention Act, 1937, c.40.
6. Alberta - Industrial Conciliation and Arbitration Act, 1938.
7. British Columbia - Industrial Conciliation and Arbitration Act, 1937, c.94.

Chapter 10. Legislation Concerning Apprenticeship and Technical Education

Introduction

Apprenticeship is a method of passing on acquired trade skills and of maintaining a supply of craftsmen. It fell into disuse in Canada and the United States but in recent years a world-wide shortage of skilled workers has again focused attention upon its possibilities.

Following the American Civil War, the United States went through its "Industrial Revolution" when machinery revolutionized industrial methods. Hand in hand with this development went the exploitation of the apprenticeship system to a point where it performed the function merely of supplying cheap child labour. With the strengthening of trade unions an agitation was started which brought about legislation in almost all the states of the union that stringently regulated apprenticeship. The master was made responsible for the feeding and clothing of the apprentice, and for his lodging, health, morals, etc. Neglect of any of these things made the master liable for serious penalties. As Europe was supplying a steady stream of skilled workmen, most employers did not want to face the responsibilities involved in apprenticeship and it became little used.

In Canada, immigration from the Old Country was supplying adequate numbers of skilled workers, and apprenticeship came to be used largely as a system for placing paupers in industry. Some of the provincial legislation still envisages mainly this type of apprenticeship. But with the drying up of immigration within the last few decades two things became evident; first, that a shortage of skilled labour threatened whenever industrial activity picked up; second, that no satisfactory method existed of training young persons for skilled

positions in industry. As a result, facilities for technical education have been and are being expanded and there is a revival of interest in apprenticeship. The experience of the last depression has underlined both the difficulties and the needs of the situation but it is safe to say that except for the unlikely possibility of a new wave of skilled immigrants coming from Europe, the problem of training skilled workers for industry is one that will be a permanent interest of Canadian governments. (114)

This conclusion is fortified by the fact that apprenticeship links up with governmental policy relating to education and employment. Regarding the former, apprenticeship fits in with the movement to provide greater facilities for technical education that has been so noticeable since the Great War. Regarding the latter, it is becoming increasingly clear that the unskilled worker is in a much more vulnerable position than the skilled, and more likely both to become unemployed and to remain so. Furthermore, there is a definite tendency towards a scarcity of skilled workers at the end of a period of depression and "... the experience of this and other countries (is) that an adequate skilled group is required before the unskilled group can be successfully absorbed into industry". (115) An effective system of apprenticeship would help provide the necessary skilled workers.

(114) It may be argued that the problem of training skilled workers is one for industry alone, and it may be noted that some industries such as the railways and some of the electrical and automotive firms have for some time had successful apprenticeship systems of their own in operation. But in general, industry and associations of business men have shown little awareness of the problem as a whole and no ability to cope with it. In the meantime, the social and economic implications of the problem are such that some governments have found it good public policy to give leadership.

(115) Interim Report of the National Employment Commission, p.12.

Provincial Legislation regarding Apprenticeship (116) (117)

Three provinces have recently passed legislation designed to meet the needs of the modern industrial situation. These statutes are the Ontario Apprenticeship Act of 1928, the British Columbia Apprentice Act of 1935, and the Nova Scotia Apprenticeship Act of 1937. These statutes set up provincial machinery to regulate and assist, in co-operation with advisory committees, the process of apprenticeship in stipulated trades. The details of this legislation will be found in Appendix VIII.

Dominion Legislation

The Technical Education Act was passed by the Dominion Parliament in 1919 to assist any form of vocational, technical

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- (116) The early apprenticeship laws passed by provincial legislatures were interested primarily in promoting, rather than safeguarding, the employment of children. Parents or guardians were usually allowed to bind over their children as apprentices and, in some provinces, orphan or delinquent children could be bound over by civic and judicial authorities or by charitable institutions. The Maritime Provinces required the master to see that the child was taught reading, writing and the elementary rules of arithmetic. The Criminal Code of Canada made it a criminal offence not to provide food, clothing or lodging for a servant or apprentice under sixteen years of age. These laws, where they have not been repealed, are now obsolete.
- (117) The experience of Ontario indicates a definite relationship between the functioning of the Industrial Standards Act and the Apprenticeship Act. Employers in many industries have been in the habit of hiring young persons as helpers at low wages. Too often this meant that the young worker got little training of real value and ended as an unskilled worker. The Industrial Standards Act helps to remedy this situation. Under this Act employers are now obliged to indenture such persons as apprentices or considerably to increase their wages. According to the Ontario Department of Labour Report of 1936 "this is resulting in a marked increase in the number of applications for apprenticeship in the building trades..." It may be concluded, therefore, that any extensions of the Industrial Standards Act would automatically increase the scope and effectiveness of the Apprenticeship Act and help remedy the undesirable position that the young "helper" now finds himself in.

or industrial education deemed necessary or desirable in promoting industry and the mechanical trades. The sum of \$10 million was appropriated for grants to the provinces, the proportion to be based on population up to a maximum of one-half of approved expenditures on work under the Act. All the provinces made agreements for developing technical education but eight of them were not able to earn their full appropriations within the ten years originally set by the Act. The time was consequently extended for the benefit of these provinces, at first until 1934, and later to March 31, 1939. Manitoba is now the only province which has not exhausted the balance of its subsidy.

The Vocational Education Act was passed in 1931. The sum of \$750,000 per annum for 15 years was to be paid to the provinces in proportion to their population for the purpose of promoting and assisting vocational education. Payments were conditional upon agreements being entered into between the Minister of Labour and the governments of the provinces. The Governor-in-Council had authority to make regulations concerning the nature of the vocational education, the use to which the federal grants were to be put, etc. The Act is inoperative as no province has succeeded in concluding an agreement under it.

By the Unemployment and Agricultural Assistance Act of 1937, the sum of \$1 million is set aside for the training of unemployed youth under plans to be submitted by each provincial government. The Minister of Labour, the Hon. Norman Rogers, stated "The Youth Employment Committee made a number of reports directly to the National Employment Commission which gave further study to these and made definite recommendations to the Government. They recommended that this money could be expended to the best advantage in some provinces upon forestry projects, or upon projects which would enable unemployed young men to fit themselves

for work in the primary industries of those particular provinces. It would be neither wise nor practical to indicate one pre-digested plan, so to speak, which would apply generally throughout the Dominion. We are of the opinion that action should be taken in co-operation with the provinces and that the training projects should be related as far as possible to the basic industries of the province wherein unemployment exists ... Where it is contemplated to give special courses to train unemployed, we shall try to utilize, in co-operation with the Provincial Government, the existing equipment in the form of technical schools, etc." Agreements with all the provinces have since been concluded under this Act, chiefly along the lines of training for industry, forestry, mining, agriculture and domestic service. Some aspects of this work link up with the training of apprentices and learners.⁽¹¹⁸⁾ Technical classes for apprentices have been established for an intensive 13 week period and the pay of the apprentices met out of the appropriations under this Act. Similarly, 40% of the expenses of "learners" are met during a 13 week training course which is designed to fit them for immediate work in industry. On the agricultural side, vocational courses ranging from two weeks to several months have been arranged for both sexes.⁽¹¹⁹⁾

(118) "Learnership" is the period necessary for learning semi-skilled processes in industry. It is a much less lengthy and complicated training than that for apprenticeship, where a skilled trade is mastered.

(119) These courses may well aid national policy in raising the level of agricultural technique to meet the needs of higher quality and more uniform standards in many lines of agricultural products if export markets are to be expanded.

Problems in the field of training youthful workers for industry.

Probably the greatest problem of the system of apprenticeship is its almost complete break-down during a serious depression. For various reasons employers find it impossible to observe old apprenticeship contracts or to start new ones. In the first place, it is most difficult for many employers to give their apprentices steady work. Secondly, employers do not wish to face the cost of apprenticeship. Thirdly, they do not see the need for apprentices, as skilled labour is plentiful and usually cheap during periods of depression. The youths who are thus unable to become indentured arrive at mature working age unskilled and usually after a period of idleness. By the time the next business upswing occurs they are too old to learn a trade. And it is precisely then that a scarcity of skilled workers almost invariably shows itself because not only have existing skills deteriorated through unemployment but no new skills have been trained.

The recent experience of Ontario with apprenticeship is a typical one. Soon after its inception in 1928, the Apprenticeship Act seemed to be functioning nicely. With the depression its machinery was practically brought to a standstill. Recent reports from the Ontario Department of Labour show that during the depression years the number of apprentices (120) dropped sharply, training classes were discontinued, and the apprenticeship staff had to be reduced. All available work was being given to men already trained, and apprentices were advised to take what work they could get, even at reduced wages.

(120) The number of active indentured apprentices, year by year, since the enactment of the statute are as follows:

<u>1929</u>	<u>1930</u>	<u>1931</u>	<u>1932</u>	<u>1933</u>	<u>1934</u>	<u>1935</u>	<u>1936</u>
1028	1168	1030	826	647	343	319	330

At the same time, informed quarters realized that there would be a shortage of skilled workmen as soon as industrial conditions showed an improvement. The 1936 Report says "the construction industry will be considerably hampered during the next few years through lack of properly trained men." ⁽¹²¹⁾ This conclusion is borne out for industry generally by the investigations of the National Employment Commission. Here then is a situation that is harmful both socially, for the youths who do not get training, and economically, because of the shortage of skilled workers that is soon created.

The greatest lack in the general field of training young people for industry seems to be that the several lines of attack are not co-ordinated into a general plan of campaign. Technical education, apprenticeship and youth-training should be integrated both in times of prosperity and depression. The youth-training plans of governments in times of depression might do much to meet the break-down of the apprenticeship system during those periods but these youth-training plans would have to be organized carefully and started earlier. The relationship between the technical schools and industry and between the technical schools and apprenticeship needs to be thought out more clearly. There is some sentiment for establishing in technical schools a standard of training which would be to industry what matriculation is to the university. The recently announced re-organization of the secondary school system of the Province of Ontario seems to integrate several lines of vocational education, including industrial and commercial training, into the secondary school system so that the graduates of those courses may be qualified to proceed directly to industry and commerce, etc. in the same way that the

(121) At p. 35.

matriculant of the general course is qualified to proceed directly to university. Such training would not be a substitute for apprenticeship but would be an excellent preparation for it, and, if proper contacts with industry were established, this training might supersede "learnership".⁽¹²²⁾

The actions of Ontario show how much can be done by the provinces in meeting existing needs in the field of technical education and apprenticeship. But generally speaking there is a glaring need for co-ordination of policy and for serious thought regarding plans to forestall the disintegrating effects of depressions. The Dominion government might well provide the leadership in meeting these problems either by promoting conferences to consider ways and means, by research and publicity, or by extending financial aid. By the Vocational Education Act of 1931 and the youth-training provisions of the Unemployment and Agricultural Assistance Act of 1937, it is already in the field and should be in a good position to give leadership.⁽¹²³⁾

References

- (1) Canada - Technical Education Act, R.S., 1927, c.193; 1929, c.8; 1934, c.9.
- Vocational Education Act, 1931, c.59.
- Unemployment and Agricultural Assistance Act, 1937, c.44.
- (2) Nova Scotia - Apprenticeship Act, 1937, c.4.
- (3) Ontario - Apprenticeship Act, 1928, c.25.
- (4) British Columbia - Apprenticeship Act, R.S. 1936, c.12.

(122) There is an obvious necessity for vocational guidance in this field so that youths will know about the occupations that provide the best opportunities for employment. An efficient employment service should be able to perform this important function.

(123) The initiative that the Dominion government has so far taken has been under the latter and not under the former legislation. This means that no programme can be worked out for more than a year and partly explains the reluctance of some of the provinces to co-operate to the extent of buying equipment, etc.

Chapter 11. Conditional Grants for Technical Education
and Youth-Training.

1. Technical Education

The grant for technical education under the Act of 1919 differed somewhat from other grants in that its indention with "education" made it a peculiarly dangerous one in which to attempt Dominion control. Indeed the sensibilities of the Province of Quebec, especially, regarding education made it a matter of some wonderment that the Dominion Parliament should have brought in such legislation at all. The reason was that considerable pressure had been brought to bear on the federal government because technical education in the provinces was so backward and because its importance for industrial efficiency made it a matter of national significance.⁽¹²⁴⁾ The Technical Education Act may be regarded, therefore, as the type of federal legislation that merely intends to get a desirable service started in the provinces, and with no idea of federal participation beyond the period stipulated in the Act.

From this point of view, the grant was not a success. It did succeed in stimulating technical education in the provinces. But, despite the fact that the statute definitely stated that Dominion participation would be only for a ten year period "for the purpose of promoting and assisting technical education in Canada", there was a great feeling of resentment among the provinces when further grants were not made after the ten-year period had expired. The provinces felt that they had been induced to make expenditures on buildings and equipment and then had been left "holding the bag". This resentment still lasts today and partly explains the unwillingness of some provinces to make any capital expenditures for youth-

(124) A Royal Commission on Industrial Training and Technical Education had been appointed in 1910, and the Act of 1919 carried out its recommendation for a federal grant.

training. As there was nothing in the Act to cause the expectation of continuing Dominion expenditures, the question arises whether this type of grant does not tend to lead to inter-governmental friction. On the other hand, progressive annual decreases in the grant over its full term, might go far to reduce the expectancy of its continuation, and resulting friction.

The Act provided for the usual Dominion supervision and control over the administration of the grant, namely, advisory participation in working out the provincial programmes, inspection, withholding of payments for unsatisfactory work, and auditing. Although it had been stated by a government member in debate on the measure that, "It is one of the first principles that when Parliament votes money it must exercise a certain amount of control in connection with the expenditure of that money....."(125) any attempt to check upon provincial officials or actively to control administration in the provinces in any way was frowned upon by the Dominion Cabinet because it was felt that the feeling for "provincial rights" was especially strong in the field of education.(125a) Consequently, Dominion administrative officials could do nothing to improve standards of teaching and of personnel in the provinces.

The history of the technical education grant, therefore, has two main points of interest. First, it shows how completely political considerations can stop effective Dominion supervision and control over the administration of a conditional grant. Second, it indicates that a conditional grant for a limited period of time will lead to great provincial pressure for an extension of the period and to friction if the time limit is observed.

(125) House of Commons Debates, 1919, p.3801.

(125a) This fact is significant in view of current requests for extension of federal aid to and supervision of education. (See submissions of Canadian Teachers' Federation (National) and provincial federations).

2. Youth Training

In 1937, Parliament appropriated \$1 million for youth-training and in 1938, \$3 million. These sums are available to the provincial governments on a fifty-fifty basis. The procedure has been to conclude agreements with each province covering the youth-training projects for the year. In 1937, 32,301 men and 23,156 women were enrolled in these projects.

Conditional grants for youth-training have been under the handicap of being on an annual basis. With no assurance of continuity, the provinces have been reluctant to set up much of an organization. (126) In most provinces, the administration of youth-training has simply been given as an added duty to civil servants. Many of these administrators are not particularly interested in youth-training and others are too busy to give proper attention to the matter. There is some tendency too for political considerations to interfere with the scheme. Provincial political leaders who for other reasons may not be on good terms with the Dominion government, may be none too keen to co-operate effectively in the programme. The agreements, when concluded, are subject to little effective control; all that the Dominion supervisor can do is to make suggestions and perhaps bring pressure to bear when the new agreements are being drawn up the following year. The position of Dominion supervisor is one that requires abundant tact and patience.

The essential point about conditional grants for youth-training is that they are an inefficient and wasteful way of doing the job. Instead of the existing dual administration with its delays and possibilities for friction, it would be cheaper and much more effective if one or other governmental jurisdiction had sole responsibility, and adequate revenue to carry out that responsibility.

(126) In 1938, the Dominion appropriation was not passed until three months after the beginning of the fiscal year. This is an example of the type of delay that complicates the administration of a grant on an annual basis.

Summary

Youth-training and technical education are both fields in which the provincial governments have done relatively little, but in which, it would be generally agreed, governmental action is desirable. They would therefore seem to be particularly suited to conditional grants, as one of the most important arguments for such grants is that they get a desirable service started where previously inclination on the part of the provincial governments had been lacking. Experience with the technical education grant, however, shows that although a service was started, deep resentment resulted from the withdrawal of the federal grant, even though the Dominion gave no hint that it intended to continue the grant beyond the stipulated period; and this feeling is interfering to some extent with getting a satisfactory organization established under the grants for youth-training at the present time. It may be argued that if the grant were reduced to zero in successive stages such resentment would be overcome, but there is some possibility that there would be resentment over each stage of withdrawal. Especially, would this be true during a period of depression when the provinces were faced with shrinking revenues. It remains true, however, that the provinces could make financial adjustments more easily under the successive reduction plan. The knowledge that grants would be withdrawn (whether progressively or not) would probably deter some provinces from launching admittedly desirable services or, alternatively, from establishing them on an adequate scale.

To look at it from another angle, a province

can hardly be said to have adequate revenues for any one function unless it has adequate revenues for all functions. From this point of view the device of the conditional grant evades the whole issue, as it is concerned with only one function. It might succeed in inducing a province which was having difficulty in keeping its present services at an efficient level to establish a new service, the total costs of which it must soon carry. Regardless of the desirability of the new service, this procedure can hardly be said to solve or mitigate the financial problem of the province.

To sum up, conditional grants for a limited period of time are successful in getting a desirable service started, but inevitably bad feeling seems to be created when they are withdrawn. If the provinces are certain at the outset that the grants will be withdrawn, it is doubtful how thoroughly they will be prepared to undertake the given service. Finally, the device of limited grants is one which, without proper safeguards, can be taken advantage of more readily by rich than by poor provinces, and therefore to some extent defeats its own purpose because the need is usually more pressing in the poorer provinces.

(page 145 follows)

Chapter 12 Legislation providing for Workmen's Compensation

Introduction

Industrial accidents are one of the main causes of loss of life and limb. One authority estimates that industrial accidents cause about one-quarter of the total number of (127) accidental deaths and one-third of all non-fatal injuries. They differ from other types of accidents because first, they invariably cause loss of earning power and therefore have important repercussions on the dependents of the injured or deceased person; second, they are incurred in the course of employment.

Under both the English Common Law and the Code Civil the worker got little protection against industrial accidents and such protection as he got had, of course, to be established in the law courts which often meant expensive litigation that the worker was unwilling or unable to undertake. It is unnecessary here to examine the various steps taken to modify the unfavourable position of the worker. Germany in 1884 was the first country to regard the problem as a social one, to discard the legalistic approach and to inaugurate a comprehensive system of compulsory compensation for industrial accidents. This step received immediate and widespread imitation. Canada and especially the United States were among the later countries to introduce such legislation, but at the present time it can be said that the liability of the employer for industrial accidents under state law is almost universal.

Industrial diseases were included in such legislation, but the lines are not as clear-cut here as with industrial

(127) S. J. Williams in the Encyclopedia of the Social Sciences.

accidents. There is always some difference of opinion concerning the degree to which the nature of the employment is responsible for the contraction of certain diseases. The usual history has been for relatively few diseases to be recognized at first but for more to be added as knowledge of industrial diseases improved.

The following advantages seem to have been demonstrated for the principle of the collective liability of employers for industrial accidents and diseases. First, it provides security for the worker and meets the social problems formerly accruing to his dependents. Second, it is less expensive than the method of litigation both for the employer and the employee. ⁽¹²⁸⁾ The rates can be kept lower than with private insurance companies because of savings in administration, advertising, and selling expenses resulting from automatic and complete coverage, and because of elimination of profits. Third, the collective principle saves any individual employer from being met with a crushing bill for compensation as the result of some disaster in his plant; and it protects the individual worker drawing compensation from destitution if his firm goes out of business.

General Statement

Compensation for industrial accidents and for certain industrial diseases is provided for in all the provinces of Canada by a provincial statute, except in Prince Edward Island. By an enactment of the Parliament of Canada, all employees of the Dominion government, with the exception of the permanent members of the military, naval and air forces, are entitled to compensation at the same rate as persons employed by private concerns in the province in which they are employed.

(128) The recent bill introduced into the Quebec legislature to repeal Workmen's Compensation Act and to return this field to the courts, (under certain conditions), was opposed by both workers' organizations and the Canadian Manufacturers' Association.

In Prince Edward Island, a Railway Employees' Compensation Act was passed in 1926, but, as railway workers in the Island are employed on the railways of the Dominion government, the operation of the statute was expressly declared to depend on the consent of the Dominion Parliament. In 1927, the Dominion Parliament amended the Government Employees' Compensation Act to provide that all employees of the Dominion government in Prince Edward Island should be eligible for compensation in the same manner and at the same rate as similar workers in New Brunswick.

There is a considerable degree of uniformity in the provincial Workmen's Compensation Acts at the present time. All provide for a provincial board to administer a provincial accident fund made up of contributions from employers in the industries within the scope of the Act. Employers are classified according to the hazard of the industry and those in each class are required to pay an annual assessment on their payrolls at a rate calculated to produce sufficient funds to take care of all accident costs in the class.

The system of collective liability on the part of employers was adopted first by Ontario in 1914, then by Nova Scotia in 1915, British Columbia in 1916, Alberta and New Brunswick in 1918, Manitoba in 1920, Saskatchewan in 1929 and Quebec in 1931.⁽¹²⁹⁾ It replaced the system of individual liability as provided for in earlier statutes.⁽¹³⁰⁾ But Part II of the Workmen's Compensation Act of each of the provinces but Alberta and Saskatchewan stipulates that, in the case of industries not within the scope of the collective liability system, or of workmen

(129) In most of the provinces, Part I of the Act sets up the system of collective liability for the employers.

(130) These statutes made employers individually liable for compensation according to the scale laid down in the Act on the finding of a court to that effect and permitted them to insure their risk with a private insurance company.

who are employed in eligible industries but who are excluded from the main provisions of the Act, the individual employer shall be liable, under certain conditions, for accidents arising out of employment. In Alberta and Saskatchewan the earlier Act laying down the conditions under which the individual employer is liable, remains in force with respect to certain classes of railway workers, who must bring action in the courts to secure compensation. (131)

In Ontario and Quebec, municipal authorities and certain large corporations, such as railway and shipping companies, telephone and telegraph companies, are liable for compensation for accidents to their own employees, but the amount of compensation and all questions connected with it are determined by the Workmen's Compensation Board of the province in the same manner as in the case of accidents for which compensation is paid out of the provincial Accident fund. (132)

Scope of Canadian Compensation Laws

The Acts vary in scope but in every province power is given to the Board to include within the collective liability system industries or workmen (otherwise excluded) on the application of the employer, or, in Alberta and British Columbia, at the request of the workmen, or, of its own motion in all the provinces but British Columbia. Industries may also be excluded by the Board from Part I of the Act, on

(131) This was by choice of the employees who believed the earlier statutes gave them more protection owing to the large proportion of fatal accidents in railway service and the fact that compensation as high as 100% of earnings might in these cases be awarded by the court.

(132) A more detailed account of the classes of workers included or excluded from the various provincial Acts is given in Appendix VII. See also Workmen's Compensation in Canada, Dominion Department of Labour, July 1938.

certain conditions, in all the provinces but British Columbia. In all the provinces but Alberta and British Columbia undertakings in which not more than a stated number of workmen are usually employed may be excluded, but, in Manitoba and Ontario, such undertakings must be re-admitted if an employer or workman makes application, or, in Quebec, if the employer makes application.

Provincial acts differ in their coverage of some classes of employees of provincial and municipal governments, workers in shops, restaurants and hotels, office workers and (133) workers in agriculture and domestic service. In Alberta, Manitoba, New Brunswick and Nova Scotia, farm labourers may be brought under the collective liability system on the application of the employer, or, in Alberta, at the request of the workers and with the employer's consent. Only in Alberta has action been taken under this section and in that province some half dozen persons carrying on farming operations, together with some other undertakings, have had their employees brought within the Act.

a. International Convention

Convention No. 17, 1925, and Recommendations Nos. 22 and 23 of the same year cover compensation for industrial accidents. The Convention provides that the law shall apply to all workers employed in any public or private undertaking except fishermen, seamen and farm workers (who are covered in other Conventions) but exceptions may be made in the case of casual workers employed otherwise than for the purpose of the employer's business, out-workers, members of the employer's family who reside with him and non-manual workers whose remuneration exceeds a limit specified in the law.

(133) See Appendix VII for details.

The chief difference between the scope of the International Legislation and the Canadian laws is that the latter apply only to the more hazardous employments and exclude persons employed in commercial establishments. Workers in offices and shops and persons employed in institutions are generally outside the scope of the Acts. All employees of the Dominion government, except those in military, naval and air forces, are within the scope of the Acts, but provincial and municipal employees are not always covered (see Appendix IX).

Convention No. 12, 1921, extends to all agricultural wage-earners the laws and regulations of each country which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment. Practically nothing has been done in Canada as yet to protect the agricultural worker.

The Shipowners' Liability (Sick and Injured Seamen) Convention (No. 55), 1936, stipulates that the shipowner shall be liable in respect of, (a) sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the terminating of the engagement; (b) death resulting from such sickness or injury; (c) wages in whole or part if the seaman has dependents, until he is cured or until his sickness or incapacity has been declared of a permanent nature. ⁽¹³⁴⁾ Alternatively, wages for at least sixteen weeks may be stipulated under these conditions. The Canada Shipping Act implements the first two points but not the last.

(134) While the afflicted seaman is on board ship, he must be paid full wages whether or not he has dependents.

Industrial Diseases

The industrial diseases for which compensation is paid are set out in the various Acts or, in New Brunswick, in a regulation under it; but in each province the Workmen's Compensation Board may add to the list. In all the provinces, compensation is payable for anthrax and for poisoning by lead, mercury, phosphorus and arsenic or their compounds.

An International Labour Convention (No. 18, 1925, Revised by No. 42, 1934), provides for compensation for certain industrial diseases and the list, which it gives in a schedule, covers those mentioned in the preceding paragraph. In addition, the convention requires payment of compensation for (1) silicosis, which is compensated under certain conditions in Alberta, British Columbia, Manitoba, Ontario and Saskatchewan; (2) poisoning by benzine (benzol) or its homologues or nitro- and amide derivatives, which is compensated in Alberta and British Columbia while benzol poisoning is specified in Ontario, Quebec and Saskatchewan; (3) pathological conditions due to radium and other radio-active substances or to X-rays, which are not compensated in any province; (4) cancer of the skin from handling tar, pitch, bitumen, mineral oil, paraffin or their compounds; and (5) poisoning by the halogen derivatives of hydrocarbons of the aliphatic series (mineral oils). With respect to the last two diseases, it should be noted that in Ontario, compensation is given for cancer arising from handling pitch and tar, and in Alberta, for infection or inflammation of the skin or contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapours.

It is apparent, then, that the changes necessary in the Canadian laws to bring them into line with this convention would not be very considerable. Some of the provinces which have

not provided for compensation for the diseases specified in the convention have few, if any, industries causing such diseases and the implementing of the convention would impose little or no cost on employers.

On the other hand, under all the provincial Acts, other diseases peculiar to the industries of the province are compensated, such as certain miners' diseases, compressed air illness, glanders, frostbite, infection or dermatitis from handling certain substances, eye diseases from electro - and oxy-acetylene, and poisoning from brass, nickel, zinc, sulphur, chromic acid, ammonia, carbon bisulphide, carbon dioxide, carbon monoxide or nitrous fumes.

A table setting out the diseases compensated by provinces will be found in Appendix IX.

Waiting Period

Under each Act, a fixed period must elapse between the date of the accident and the date when compensation begins. This "waiting period" varies from three to seven days and, in some provinces, compensation is paid for the waiting period if disability continues beyond it. According to the International Labour Convention, compensation must be paid as from the fifth day.

The laws of Alberta, British Columbia, Manitoba and Saskatchewan appear to reach this standard at least. In these four provinces, no compensation is payable for the first three days of a disability except in British Columbia if it lasts longer than fourteen days. In British Columbia, Manitoba and Saskatchewan, medical aid is given for any disability.

In New Brunswick, no compensation is paid for the first six days nor in Nova Scotia, Ontario or Quebec unless the disability continues for seven days or more in which case compensation is payable from the first day.

Medical Aid

In addition to periodical cash payments, free medical aid is provided for injured workmen under all the Acts but those of Alberta and British Columbia. In British Columbia the workers are required by the Act to contribute one cent a day to the medical aid fund. In Alberta, the Board is empowered to require a deduction from wages for medical aid. The amount is decided by the Board and in practice varies with the hazard of the industry. The 1936 rates range from one-quarter cent to 10 cents for each shift.

In Nova Scotia medical aid is given for 30 days only, unless authorized by the Workmen's Compensation Board for a longer period.

In all provinces, "medical aid" includes medical, surgical, nursing and hospital services. Artificial limbs and surgical appliances are supplied also. In Nova Scotia, Ontario and Quebec workmen may have such apparatus kept in repair for one year, and in Alberta and Saskatchewan for the period of disability. In Alberta, British Columbia, Manitoba and Quebec medicines are supplied and in Ontario, dental treatment. Manitoba may furnish dental care.

a. International Legislation

The Convention stipulates that injured workmen shall receive free medical aid and such surgical and pharmaceutical aid as is necessary as a result of accidents. All of the provinces except Alberta and British Columbia conform to the Convention in providing free medical aid. All of them give surgical care but some of them do not supply medicines. Under the Convention, injured workmen are entitled to the supply and normal renewal of artificial limbs and surgical appliances, but a lump sum payment may be made in lieu of this provision. All the provinces supply surgical appliances and artificial limbs but there

are some differences in the provisions for repair and renewal.

Insolvency of the Employer

All the Workmen's Compensation Acts provide that, in case of the death of the employer or of an assignment or winding up of a company, the amount of any assessment or compensation for which the employer is liable shall be included among the debts, such as legal costs, taxes or wages, which, under the statutes governing such cases, have priority over other claims against the employer's property.

The Dominion Bankruptcy Act stipulates that, subject to the provincial laws concerning taxes or rates on the property of the debtor and rent, and after costs of proceedings are provided for, wages for the preceding three months and any indebtedness under a Workmen's Compensation Act shall have first claim on the property.

In the International Labour Convention it is stipulated that the law shall ensure the payment of compensation in the event of the insolvency of the employer.

Non-resident Workmen and Dependents

The Convention of the International Labour Conference respecting equality of treatment of national and foreign workers provides that each country which has ratified the Convention shall grant to subjects of any other member that has ratified the Convention the same treatment in respect of compensation for industrial accidents happening in its territory as it grants to its own subjects or residents. This equality of treatment is to be given without any condition as to residence.

All the Canadian Workmen's Compensation Acts provide that compensation shall be paid to workmen or their dependents who reside in foreign countries, but under some Acts compensation is granted to foreign workers only on conditions that similar benefits are granted to foreign workers by the law of the country

in which the workman or his dependents reside. This condition of reciprocal treatment is found in the New Brunswick, Nova Scotia, Ontario, Manitoba and Saskatchewan statutes, but in the last three provinces the Board may order compensation to be paid without such condition.

In Ontario, Quebec, Manitoba and Saskatchewan, the Board may award a lump sum in lieu of periodical payments; in British Columbia, Alberta and New Brunswick the Board may grant a smaller sum if the cost of living in the other country is lower, and in New Brunswick and Nova Scotia the Board may pay a smaller sum if the scale of compensation in the other country or province is a lower one. In Manitoba, Ontario and Saskatchewan, the amount awarded to non-resident dependents may not be greater than would be payable under the law of the country concerned to a resident of Canada. (135)

Scale of Compensation

There has been an increasing tendency towards uniformity in the scale of compensation payable under the provincial acts in recent years. In most of the provinces it approaches the standard set in the Recommendations of the International Labour Conference - two-thirds of annual earnings for permanent total incapacity or to dependents in case of fatal accidents.

On the other hand, all the Canadian laws place a limitation on the annual earnings that may be used in reckoning compensation. In New Brunswick and Nova Scotia, the maximum annual earnings that may be used are \$1,500. In the other provinces \$2,000 is the maximum but in Alberta this limitation does not apply to permanent disability cases.

(135) In the neighbouring states of the United States, from which most of our non-resident workmen would ordinarily come, payments for death or partial disability are usually for a lump sum amount or a prescribed period of weeks. This restriction applies to permanent total disability in some states too, although more often compensation runs for life. In some of the states (Montana, Illinois, New Hampshire and Vermont) compensation for permanent total disability is 50% of the employee's wages, but in most of them it is in accord with the Canadian practice of two-thirds of wages.

Where death results from the injury, none of the Canadian provinces except Alberta and Quebec (and New Brunswick for girls) pays compensation in respect of all children up to eighteen years of age as stipulated in the Recommendation of the Conference (No. 22, 1935).⁽¹³⁶⁾ In Alberta and Manitoba, payments may be made up to eighteen years of age in order to continue education and in all the provinces compensation for an invalid child is continued, until recovery in British Columbia and Manitoba, or as long as the Boards considers the workman would have contributed to his support in other provinces.

All the Acts provide for compensation under similar headings, namely, - permanent total disability, permanent partial disability, temporary total disability, temporary partial disability, and fatal accidents. Table 17 shows the benefits payable to dependents in the various provinces in the case of a fatal accident. Table 18 shows the benefits payable for the different types of disability.

Cost of Administration

All the provincial Acts except that of New Brunswick stipulate that the salaries of members of the Board and other expenses of administration are to be paid from the Accident Fund. In New Brunswick, these costs may be paid from the Consolidated Revenue Fund but the Lieutenant-Governor-in-Council may order

(136) The Recommendation defines dependency as follows:
"Where death results from injury, those entitled to be regarded as dependents for purposes of compensation should include at least the following:
(1) deceased's husband or wife;
(2) deceased's children under 18 years of age, or above that age if, by reason of physical or mental infirmity, they are incapable of earning;
(3) deceased's ascendants (parents or grandparents), provided that they are without means of subsistence and were dependent on the deceased, or the deceased was under an obligation to contribute towards their maintenance;
(4) deceased's grandchildren and brothers and sisters, if below 18 years of age, or above that age if, by reason of physical or mental infirmity, they are incapable of earning, and if they are orphans, or if their parents, though still living, are incapable of providing for them."

WORKMEN'S COMPENSATION - BENEFITS PAYABLE TO DEPENDENTS ON ACCIDENTAL DEATH OF WORKMAN

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	BRITISH COLUMBIA	ALBERTA	SASKATCHEWAN	MANITOBA
Funeral	\$100	\$125	\$125	\$150
Widow or Invalid Widow	\$35 per month	\$35 per month	As in Quebec	\$40 per month
Children - A. With Parent	Under 16, \$7.50 per month each (a)	Under 18, payments as in Manitoba	As in Ontario	Under 16, eldest, \$12 per month; 2nd, \$10 per month; 3rd, \$9 per month; others \$8 per month each. (a)
B. Orphans	Under 16, \$15 per month each. Maximum in all \$60 per month. (a)	Under 18, \$15 per month each.	As in Ontario	As in Ontario (a)
Where only dependents are other than spouse or children.	(1) As in New Brunswick. Maximum \$30 per month to parent or parents. Maximum in all \$45 per month. (2) If there is widow or invalid widower or orphans, maximum to parent or parents \$30 per month. Maximum total all compensation \$65 per month. (b)	As in New Brunswick. Maximum to parent or parents \$30 per month. Maximum in all \$65 per month. (b)	As in New Brunswick	As in New Brunswick. Maximum \$20 per month each. Maximum in all \$40 per month. (b)
Maximum and Minimum to consort and children.	\$65 per month	-	As in Ontario (c)	(c) As in Quebec, but minimum benefit \$12.50 per week if one child; \$15 if more.

- (a) In Manitoba, payments to children may be made up to 18 years if desirable to continue education. In Alberta, New Brunswick, Nova Scotia, Ontario, Quebec, and Saskatchewan payments to invalid children are continued so long as Board considers workman would have contributed to support.
- (b) In all provinces compensation in these cases is continued so long as Board considers workman would have contributed to support.
- (c) For maximum earnings reckoned, see Table 18.

TABLE 17 (Cont'd)

WORKMEN'S COMPENSATION - BENEFITS PAYABLE TO DEPENDANTS ON ACCIDENTAL DEATH OF WORKMAN

	ONTARIO	QUEBEC	NOVA SCOTIA	NEW BRUNSWICK
Funeral	\$125	\$ 125	\$ 100	\$ 100
Widow or In- valid Widower	As in Quebec	\$40 per month, plus sum of \$100	\$30 per month	\$30 per month
Children				
A. With Parent	Under 16, \$10 per month each (a)	Under 18, \$10 per month each (a)	Under 16, \$7.50 per month each (a)	Boys under 16, girls under 18, \$7.50 per month each (a)
B. Orphans	Under 16, \$15 per month each (a)	Under 18, \$15 per month each (a)	Under 16, \$15 per month each. Maximum \$60 (a)	Boys under 16, girls under 18, \$15 per month each (a)
Where only depen- dants are other than spouse or children	As in New Brunswick	As in New Brunswick	As in New Brunswick Maximum to parent or parents \$30 per month. Maximum in all \$45 per month (b).	Sum reasonable and in pro- portion to pecuniary loss (b)
Maximum and minimum to consort and children	As in Quebec, (c) but minimum benefit \$12.50 per week.	2/3 of earnings, (c). Minimum \$50 per month to parent and one child; \$12.50 per week if more.	Maximum 2/3 of earnings (c)	35% of earnings (c)

TABLE 18

WORKMEN'S COMPENSATION - BENEFITS PAYABLE IN CASE OF DISABILITY

	BRITISH COLUMBIA	ALBERTA	SASKATCHEWAN	MANITOBA
Permanent Disability.	62½% of earnings, Minimum \$10 per week, or earnings, if less.	2/3 of earnings. Minimum \$10 per week, or earnings, if less.	As in Quebec.	2/3 of earnings. Minimum \$15 per week, or earnings, if less.
a. Total				
b. Partial	62½% of difference in earnings before and after accident. If earnings not substantially less, lump sum may be given.	Based on impairment of earning capacity.	As in Quebec.	As in Quebec.
Temporary Disability.				
a. Total	As in permanent total disability for duration.	2/3 of earnings.	As in Quebec.	As in Quebec.
b. Partial	62½% of difference in earnings before and after accident.	Based on impairment of earning capacity.	As in Quebec.	As in Quebec.
Maximum Earnings Reckoned.	As in Quebec.	As in Quebec.	As in Quebec.	As in Quebec.

WORKMEN'S COMPENSATION - BENEFITS PAYABLE IN CASE OF DISABILITY

		(a)	
		ONTARIO	QUEBEC
		NOVA SCOTIA	
		NEW BRUNSWICK	
Permanent Disability	As in Quebec	2/3 of earnings. Minimum \$12.50 per week, or earnings, if less.	2/3 of earnings. Minimum \$8 per week, or earnings, if less.
a. Total			55% of earnings. Minimum \$5 per week, or earnings, if less.
b. Partial	As in Quebec	2/3 of difference in earnings before and after accident. Minimum as in total disability in proportion to disability. If diminished 10% or less, lump sum may be given.	2/3 of difference in earnings before and after accident. If no difference, may be a lump sum.
			Amount determined by Board. Maximum \$2500. If impaired 10% or less, lump sum may be given.
Temporary Disability	As in Quebec	As in permanent total disability for duration.	2/3 of earnings for duration. Minimum \$8 per week or earnings, if less.
a. Total			As in permanent total disability for duration.
b. Partial	As in Quebec	As in permanent partial disability for duration.	As in permanent partial disability for duration.
			If earnings diminished by more than 10%, 55% difference earnings before and after accident.
Maximum Earnings Reckoned	As in Quebec	\$2,000 per annum.	\$1,500 per annum.
			\$1,500 per annum.

(a) The Nova Scotia scale becomes effective on January 1, 1938.

payment of any portion from the Accident Fund.

In British Columbia, Manitoba, Nova Scotia, Ontario and Quebec, an annual grant may be made from the Consolidated Revenue Fund to assist in defraying expenses.

In all the provinces, however, it appears to be the practice to pay the costs of administration from the Accident Fund. In Ontario and Quebec, the employers who are individually liable for compensation through the Workmen's Compensation Board are required to pay a proportion of the administrative expenses, and in all provinces the Dominion government and the provincial government, where provincial employees are within the scope of the Act, contribute to the cost of administration in proportion to their accident rate.

Accident Prevention

The Workmen's Compensation Acts of all provinces make special provision for the prevention of accidents. In all the provinces but Manitoba, the Board has power to inspect premises to see that proper precautions are taken and that the safeguards required by law are being used. In Manitoba, safety regulations are made by the provincial Bureau of Labour.

In Alberta, British Columbia and Saskatchewan, the Board may direct that certain measures be taken or certain safety devices be installed for the prevention of industrial accidents or diseases. In both Alberta and British Columbia, regulations have been made by the Boards.

In New Brunswick, Nova Scotia, Ontario and Quebec, associations of employers, and in Saskatchewan associations of employers and workmen, in any of the classes into which they are divided for purpose of assessment, may make rules for accident prevention. Grants are made by the Workmen's Compensation Board to safety associations in all the provinces.

In all these provinces after certain formalities, regulations made by these associations become binding on the

industries concerned. Such regulations have been issued by the Accident Prevention Associations in Ontario, Nova Scotia and Quebec and are being considered in New Brunswick.

In all the provinces provision is made for increasing the assessment on any employer or industry in which the accident rate is higher than the average. Under all the Acts, the Board is empowered to take measures to aid in getting injured workmen back to work and in lessening any handicap resulting from accidents.

Tables 19 and 20 give statistics regarding industrial accidents in Canada and the provinces. Table 19 shows the total number of fatal industrial accidents in Canada for 1936 and 1929, and the number in those industries with the highest accident rates. Table 20 gives all industrial accidents, fatal and non-fatal, that were compensated by the various provincial Workmen's Compensation Boards in 1935 and 1936. Figures that catch the eye are the high rate of accident in British Columbia, presumably because of the logging and lumbering industry, and the high rate of permanent disability in Quebec. It is noteworthy that the fatal industrial accidents compensated by the provinces amounted to 734 in 1936 while the total number of fatal industrial accidents was 1105 (Table 19).⁽¹³⁷⁾ This difference would appear to indicate that a considerable number of industrial accidents are not yet covered by the workmen's compensation Acts.

The narrower coverage of Canadian laws as compared with that of European countries, which tend to adhere to the wider coverage of the International Labour Convention, might very well have economic repercussions on an industry like lumbering. The wider coverage, by including many industries with very low accident rates, would presumably lower somewhat the charges on the inherently more dangerous industries. Consequently an

(137) In 1935, the figures were 681 and 972 respectively.

TABLE 19

TOTAL FATAL INDUSTRIAL ACCIDENTS IN CANADA BY PROVINCES
AND IN SELECTED INDUSTRIES WITH HIGH ACCIDENT RATES (a)

	1936										1929																																	
	B.C.					Alta.					Sask.					Man.					Ont.					Que.					N.B.					N.S.P.E.I.					Total			
Total Fatal Industrial Accidents	187	51	41	55	423	250	20	72	6	1,105	293	101	46	109	603	375	54	91	8	1,680																								
Logging	60	-	2	6	27	33	3	2	-	133	101	3	1	6	49	48	6	3	-	217																								
Metalliferous Mining	18	-	-	9	82	17	-	2	-	128	32	-	-	9	61	4	-	-	-	106																								
Coal Mining	12	12	1	-	-	-	-	18	-	43	19	29	-	-	-	-	3	29	-	80																								
Saw & Planing Mills	14	1	2	-	5	4	1	4	-	31	14	2	1	3	19	16	11	2	1	69																								
Construction	11	3	-	6	48	21	4	10	2	105	26	11	9	19	122	77	11	14	-	289																								
Transportation and Public Utilities	36	6	9	9	97	64	6	12	-	239	48	19	13	21	124	91	14	20	2	352																								

(a) From the Labour Gazette, March 1938.

TABLE 20

INDUSTRIAL ACCIDENTS, NON-FATAL AND FATAL REPORTED BY PROVINCIAL
WORKMEN'S COMPENSATION BOARDS. (a)

PROVINCE	(b)				1935			
	1936				1935			
	Medical Aid Only (c)	Temporary Disability	Permanent Disability	Fatal	Total	Medical Aid Only (c)	Temporary Disability	Permanent Disability
British Columbia	(d)	13,547	657	168	14,372	2,000	11,293	607
Alberta	4,230	4,834	91	43	9,198	4,183	6,744	72
Saskatchewan	1,657	2,280	46	14	3,997	1,820	1,699	64
Manitoba	4,600	3,900	230	44	8,744	4,274	3,732	210
Ontario	30,086	22,954	835	272	54,147	27,904	23,024	992
Quebec	21,286	20,910	1,685	119	44,000	17,196	16,331	1,490
New Brunswick	2,303	6,290	339	25	8,957	1,942	5,000	283
Nova Scotia	2,131	6,757	247	49	9,184	2,331	6,119	460
TOTAL	66,293	81,472	4,130	734	152,629	61,650	73,942	4,178

(a) From tables in the Labour Gazette.

(b) Subject to revision.

(c) Accidents requiring medical treatment but not causing disability for a sufficient period to qualify for compensation. The period varies in the several provinces; figures not reported by some boards.

(d) Not available.

industry like lumbering would not be in as favourable a competitive position in Canada as it would be in European countries which have compensation laws of a broader scope.

Association of Workmen's Compensation Boards of Canada

To bring together the officers charged with administering Workmen's Compensation laws, an Association of Workmen's Compensation Boards of Canada was formed in 1919 and has met annually to discuss matters of general interest. Its proceedings are not made public but it is quite probable that this organization has been an important factor in bringing about a greater degree of uniformity not only in the Workmen's Compensation Acts themselves but in some points of administration.

Summary

The administration of workmen's compensation is an established function of provincial governments and one that on the whole has been carried out efficiently. It is not a field characterized by overlapping or wastefulness in administration. In this, more than in any other field of labour legislation, there is a marked tendency toward uniformity in standards as between the provinces. The Canadian legislation compares very favourably with that in the United States. Its chief difference from the international legislation is in its scope. In Canada, workers employed in the less hazardous employments such as shops and commercial establishments do not come under the Compensation Acts, whereas practically all workers are covered by the International Convention. Again, the International Convention covers agricultural workers, a class of employee that gets little effective coverage in Canada.

References

(Title of Act in all provinces - Workmen's Compensation Act. In Alberta and Saskatchewan, the later statute providing for a system of collective liability is entitled Workmen's Compensation Act (Accident Fund) to distinguish it from the earlier measure determining individual liability).

1. Nova Scotia - R.S. 1923, c.129; 1929, c.44, 45;
1930, c.39; 1931, c.40, 41; 1932,
c.36; 1934, c.33; 1935, c.32; 1936,
c.26; 1937, c.37.
2. New Brunswick - 1932, c.36; 1935, c.38.
3. Quebec - 1931, cc.19,100; 1933, cc.98,106;
1935, cc.80,91,92; 1936, cc.39,40.
4. Ontario - R.S. 1927, c.179; 1931, c.37,38;
1932, c.21; 1933, c.70; 1936, c.75;
1937, c.82.
5. Manitoba - R.S. 1924, c.209; 1929, c.59; 1930,
c.49; 1932, c.56; 1936, c.54.
6. Saskatchewan - R.S. 1930, c.253; 1933, c.75; 1934,
c.54; 1935, c.78; 1937, c.86.
7. Alberta - R.S. 1922, c.177; 1929, c.29; 1932,
c.48; 1933, c.56; 1936, c.103;
1937, c.23.
8. British Columbia - R.S. 1936, c.312; 1936, c.61
(second session).

Chapter 13. Legislation Concerning One Day's Rest in Seven.

Introduction

The idea of one day's rest in seven has religious sanction and is supported by economic and social argument. From the economic point of view, it is said that a weekly rest period allows the worker to recoup his energy and makes him a more efficient workman. From the social point of view, it allows him leisure for family and personal matters and presumably makes him a better citizen. And along with legislation restricting hours of work, it lengthens his working life by helping to prevent him from being "burnt out" at an early age and becoming an unemployable.

It is well known that some work on Sunday will be necessary in most industries and that some industries must operate continuously. An arbitrary enforcement of Sunday observance legislation may therefore have bad economic results. But, for the reasons already mentioned, it is essential that provision be made for rest on some other day for employees who must work on Sunday.

International Labour Convention

Convention number 14, 1921, requires that a rest period of at least twenty-four consecutive hours in every seven days be given to all workers in industrial undertakings. "Industrial undertakings" include mines, quarries, etc., manufacturing, construction and transportation. Total or partial exceptions (including suspensions and diminutions) may be authorized after consultation with responsible associations of employers and workers. As far as possible provision must be made for compensatory rest periods for such suspensions and diminutions.

The International Labour Conference of 1921 recommended a weekly rest of 24 hours for those employed in commercial establishments.

Dominion Legislation

In January, 1937, the Weekly Rest in Industrial Undertakings Act, enacted in 1935 to give effect to the International Labour Convention, was declared by the Judicial Committee of the Privy Council to be ultra vires of the Parliament of Canada.

The Lord's Day Act of 1906 prohibits employment on the Lord's Day, except on work of necessity and mercy. In another section, which was repealed by the Weekly Rest in Industrial Undertakings Act, 1935, it was enacted that except in cases of emergency, an employee in telegraph or telephone work, in work of any industrial process, or in connection with transportation, should not be required to do work of his ordinary calling on Sunday unless he were allowed a period of twenty-four consecutive hours without labour within the next six days of such week. This provision was not made applicable to any employees engaged in the work of any industrial process whose regular day's labour is of not more than eight hours' duration. The Act states that none of its provisions shall repeal or in any way affect the provisions of any law in force in any province when this Act came into force. Responsibility for the enforcement of the Lord's Day Act rests with the provincial authorities, as no prosecution may be commenced without the leave of the Attorney-General in the province in which the offence is alleged to have been

(138)
committed.

(138) A private member's bill to amend Section 14 of the Lord's Day Act now before Parliament was passed by the Commons and was amended by the Senate to restrict the liability imposed by the bill to the corporation itself as in the existing Act, but to fix higher penalties for a second or subsequent offence. The bill as introduced would add the following subsection:-

"(2) Any person, being a director, an officer, a superintendent or an employee of a corporation, to whose direction or orders any employee is by the terms or conditions of his employment bound to conform, who authorizes or directs any such last-mentioned employee of that corporation to carry on any part of the business of the corporation in violation of any of the provisions of this Act, shall be liable, on summary conviction before two justices of the peace, to similar penalties as those to which a corporation is liable under subsection one of this section or, for a first offence, to imprisonment for a term not exceeding three months and not less than one month, with or without hard labour, and for each subsequent offence, to imprisonment for a term not exceeding six months and not less than two months, with or without hard labour."

In speaking on the amendment, the Minister of Justice, Rt. Hon. E. Lapointe, indicated the objective sought as follows:-

"There is no doubt that in the province of Quebec - I do not know whether it is the same in the other provinces - this law has not been observed by certain big corporations as well as it should have been, and labour unions have been protesting strongly against violations of the law and asking that some amendment should be made. When proceedings are taken in the courts against offenders - and it is the attorney-general of the province who has to authorize the issuing of proceedings before the courts - a corporation, when it is fined, pays the fine, and that is all there is to it. My Hon. friend seeks to make the managers, the men who are in charge of the concern, responsible as well and to subject them to fine and imprisonment to which the corporation is not subject."

Provincial legislation.

All the provinces have some legislation concerning a weekly day of rest but there are several types of varying scope. The One Day's Rest in Seven Acts and the Hours of Work Acts make the most comprehensive provision for a weekly rest period. Those statutes provide that every employer shall allow each of his employees at least twenty-four consecutive hours of rest every seven days. Some of the acts provide that whenever possible the rest day shall be a Sunday. Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and Nova Scotia have legislation of this type, but in all but Alberta the statutes are restricted to certain parts of the province or to certain occupations. The Alberta Act applies to all industries except agriculture and domestic service. None of the acts requires that employers' and workers' organizations be consulted before exceptions are allowed, nor do they provide for compensatory rest periods as required by the international convention.

When English law became part of the law of each province, it included the old English statutes relating to the Lord's Day. These statutes prohibited, with certain exceptions, employment on Sunday and the sale of goods or transaction of business on Sunday. They did not provide for any compensatory rest period where work was allowed on Sunday. In some provinces they were later amended but in most they remained as they were. In 1903, a judgment of the Privy Council declared the Ontario Act, treated as a whole, to be invalid since it was criminal law and as such a matter for the Dominion. Statutes of the other provinces were in the same position. Except in Alberta, Manitoba and British Columbia, these statutes do not appear in the revised statutes.

(139) Attorney-General for Ontario v. The Hamilton Street Railway Company and others, (1903) A.C. 524.

In 1906, the Dominion Parliament enacted the Lord's Day Act to become effective on March 1, 1907. This Act, however, reserved to each province power to exempt that province from the Act or certain parts of it by a provincial statute. In Quebec, the Sunday Observance Act was passed in 1907 before the Dominion Act became law.

The Factories Acts of British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia by defining "week" to be the period between midnight on Sunday night and midnight on the succeeding Saturday night, and limiting the number of hours that may be worked in a week, appear to rule out Sunday labour for certain workers. In Quebec, weekly hours of work are limited in retail and wholesale stores as well as in industrial establishments, under the Industrial and Commercial Establishments Act. In British Columbia, and Alberta both male and female workers are covered, in Manitoba,
(140)
and New Brunswick females only, and in Saskatchewan, Ontario and Quebec, females and boys under a certain age. The statute of Nova Scotia does not regulate weekly hours except in cases of emergency, and Prince Edward Island has no Factory Act.

Various provincial statutes provide a weekly day of rest for smaller groups of employees. British Columbia, Alberta, Saskatchewan and Ontario have legislation covering employees in fire departments. Alberta and Saskatchewan prohibit the operation of street cars on Sunday unless a vote of the ratepayers permits it. An Ontario act provides that no employee of a street railway company shall be required to work more than six days a week. With certain exceptions, persons employed in hotels and restaurants have a weekly day of rest by statute

(140) The New Brunswick Factories Act of 1937 which has not been proclaimed in force, would limit the hours of females and boys under 18.

in Manitoba, Ontario and Saskatchewan, and by order-in-council in Quebec. Sunday work in bakeshops is regulated in British Columbia and Ontario. In British Columbia no employee may work in a bakeshop on Sunday without the permission of the inspector. In Ontario, no adult male employee may work in a bakeshop on Sunday between 7 A.M. and 1 P.M.,
(141)
with certain exceptions.

Summary.

Neither Dominion nor provincial legislation fully implements the International Convention for a weekly day of rest for all workers in industrial undertakings. The provincial legislation varies considerably, with that of Alberta being the most comprehensive. It is common knowledge that the enforcement of existing legislation is poor.

References:

1. Canada: Weekly Rest in Industrial Undertakings Act, 1935, c.14; Lord's Day Act, R.S.1927, c.123.
2. Prince Edward Island: An Act for the Better Observance of the Lord's Day, R.S. 1780, c.3, as amended 1892, c.29.
3. Nova Scotia: The Limitation of Hours of Labour Act, 1935, c.12; an Act dealing with Sunday desecration, R.S. Third Series, c.159; Factories Act, R.S.1923, c.160.
4. New Brunswick: An Act respecting the observance of the Lord's Day, R.S. 1903, c.107; Factories Act, R.S. 1927, c.159; Factories Act, 1937, c.50, - (not in force).
5. Quebec: Act respecting the Limiting of Working Hours, 1933, c.40; Sunday Observance Act, R.S. 1925, c.199; Industrial and Commercial Establishments Act, R.S. 1925, c.182; Weekly Day of Rest Act, R.S. 1925, c.185; O.C. 179, Jan. 23, 1935, and O.C. 1188, May 10, 1935.
6. Ontario: One Day's Rest in Seven Act, R.S. 1927, c.276; an Act to prevent the Profanation of the Lord's Day, R.S. 1897, c.246; Fire Departments Act, R.S. 1927, c.245; Railway Act, R.S. 1927, c.224; Factory Shop and Office Building Act, 1932, c.35.
7. Manitoba: One Day's Rest in Seven Act, 1928, c.45; Lord's Day Act, R.S. 1913, c.119; Factories Act, R.S. 1913, c.70; C.A. 1924, c.70. Municipal and Public Utility Board Act, 1926, c.33.

(141) In Manitoba, a regulation under the Municipal and Public Utility Board provides for a six day week for drivers of public service and commercial vehicles.

8. Saskatchewan: The One Day's Rest in Seven Act, R.S. 1930, c.255, an Act to Prevent the Profanation of the Lord's Day, R.S. 1909, c.69; Factories Act, R.S. 1930, c.220; Fire Departments Two-Platoon Act, R.S. 1930, c.124; The Saskatchewan Railway Act, R.S. 1930, c.96.
9. Alberta: The Hours of Work Act, 1936, c.5; Lord's Day Act, R.S. 1922, c.154; Fire Department's Hours of Labour Act, 1924, c.37; Railway Act, R.S. 1922, c.48.
10. British Columbia: Sunday Observance Act, R.S. 1936, c.272, Factories Act, R.S. 1936, c.92; Fire Departments Two-Platoon Act, R.S. 1936, c.98; Shops Regulation Act, R.S. 1936, c.261.

CHAPTER 14. SUMMARY.

The comparative survey of labour legislation in Canada just completed reveals the following general facts. First, there is a marked lack of uniformity in legislation as between the provinces. Second, no single international convention has been implemented by all the provinces, technically or in substance; and no province has put into effect the standards of a substantial number of international conventions. Third, no technique has been worked out for co-operation in bringing about more uniform standards of labour legislation⁽¹⁴²⁾ or in implementing international conventions. There is nothing in the Canadian field to resemble the International Labour Organization in the international field. The device adopted by British Columbia in 1921 of passing legislation but stipulating that it should not come in force until other provinces had enacted similar legislation, has not been successful.

It follows that as far as labour legislation is concerned, Canada is one of the backward countries. Table 21 shows the record of the Dominion and provincial governments in implementing international legislation. Table 22, lists the countries belonging to the I.L.O. in the order of the number of conventions they have ratified. About forty countries including China and Japan have better records than Canada. Actually of course, Canadian workers have higher standards than the workers of many of these countries. This points to the conclusion that the reason for Canada's poor record of ratification lies

(142) In May, 1938, the first conference of the Canadian Association of Administrators of Labour Legislation was held in Ottawa. The Association is made up of the officials of the various Labour Departments in Canada. Its objects are "to serve as a medium for the exchange of information and encourage co-operation among its members; to promote the highest possible standards of law enforcement and administration; and to attain uniformity of legislation and regulations thereunder". It is possible that this Association may bring about more uniform legislation as between the provinces and better enforcement.

in the division of jurisdiction regarding labour legislation and the fact that no steps have been taken to develop a method of ratification within the constitution, the possibility of which was indicated by the Judicial Committee of the Privy Council in the judgment on the statutes giving effect to the conventions on weekly rest, hours of labour and minimum wages.

(Table No. 21 follows on next page)

TABLE 21.

CANADIAN LEGISLATION ON MATTERS COVERED BY INTERNATIONAL LABOUR CONVENTIONS, AS OF JANUARY, 1938.

Key - X - Legislation implementing chief articles of the convention.
 - A - Narrower coverage or lower standards or both.
 - O - No legislation.

Subject and Date of Convention	B.C.	Alta.	Sask.	Man.	Ont.	P.Q.	N.B.	N.S.	P.E.I.	Can.
1. Eight-hour day and forty-eight hour week in industry, 1919.....	X	A	A	A	A	A	A	A	A	(b)
2. Unemployment - 1919.....	A	A	A	A	A	A	A	A	O	
3. Employment of women before and after childbirth, 1919.....	A	O	O	O	O	O	O	O	O	
4. Night work of women, 1919.....				Revised by 41-1934						
5. Minimum age for child labour in industry, 1919				Revised by 59-1937						
6. Night work of young persons in industry, 1919..	(c)	A	A	A	A	A	A	A	O	
7. Minimum age for admission of children to employment at sea, 1920 (a).....				Revised by 58-1936						
8. Unemployment indemnity in case of loss or foundering of the ship, 1920 (a).....										X
9. Establishing facilities for finding employment for seamen, 1920 (a).....										A
10. Minimum age for child labour in agriculture, 1921.....	O	O	O	O	O	O	O	O	O	
11. Rights of association of agricultural workers, 1921.....				No legislation to prevent association						
12. Workmen's compensation in agriculture, 1921....	O	O	O	O	O	O	O	O	O	
13. White lead in painting, 1921.....	O	O	O	O	O	O	O	O	O	
14. Weekly rest in industry, 1921.....	A	A	A	A	A	A	A	A	A	(b)
15. Minimum age for admission of young persons to employment as trimmers and stokers, 1921(a)...										X
16. Compulsory medical examination of children and young persons employed at sea, 1921 (a)										X
17. Workmen's compensation for accidents, 1925.....	A	A	A	A	A	A	A	A	O	
18. Workmen's compensation for industrial diseases, 1925.....				Revised by 42-1934						
19. Equal treatment workmen's compensation, national and foreign workers, 1925.....	X	X	A	A	A	A	A	O	O	
20. Night work in bakeries, 1925.....	A	O	A	A	A	A	A	A	O	

TABLE 21 (Cont'd)

CANADIAN LEGISLATION ON MATTERS COVERED BY INTERNATIONAL LABOUR CONVENTIONS, AS OF JANUARY, 1938.

Subject and Date of Convention	B.C.	Alta.	Sask.	Man.	Ont.	P.Q.	N.B.	N.S.	P.E.I.	Can.
21. Simplification of the inspection of emigrants on board ship, 1926, (a).....										A
22. Seamen's articles of agreement, 1926, (a)....										X (d)
23. Repatriation of Seamen, 1926 (a).....										X (d)
24. Sickness insurance industry, commerce and domestic service, 1927.....	0	A	0	0	0	0	0	0	0	
25. Sickness insurance, agricultural workers, 1927	0	0	0	0	0	0	0	0	0	
26. Minimum wage fixing machinery, 1928.....	X(e)	A	A	A	X(e)	A	A	A	0	(b)
27. Marking of the weight on heavy packages transported by vessels, 1929 (a).....										
28. Protection against accidents of workers employed in loading & unloading Ships, 1929 (a).....										X (d)
29. Forced or compulsory labour, 1930.....	0	0	0	0	Revised by 32-1932	0	0	0	0	
30. Hours of work in commerce and offices, 1930.	X	A	0	0	0	0	0	0	0	
31. Hours of work in coal mines, 1931.....					Revised by 46-1935					
32. Protection against accidents of workers employed in loading or unloading ships (Revised 1932) (a).....										
33. Minimum age for child labour in non-industrial employment, 1932.....										
34. Fee-charging employment agencies, 1933.....	X	X	X	X	Revised by 60-1937	X	0	X	0	
35. Old age insurance in non-agricultural employments, 1933.....	0	0	0	0	0	0	0	0	0	
36. Old age insurance in agricultural employment, 1933.....	0	0	0	0	0	0	0	0	0	
37. Invalidity insurance in non-agricultural employments, 1933.....	0	0	0	0	0	0	0	0	0	
38. Invalidity insurance in agricultural employment, 1933.....	0	0	0	0	0	0	0	0	0	
39. Widows' and orphans' insurance in non-agricultural employments, 1933.....	0	0	0	0	0	0	0	0	0	
40. Widows' and orphans' insurance in agricultural employment, 1933.....	0	0	0	0	0	0	0	0	0	
41. Employment of women during the night (Revised 1934).....	(c)	0	A	0	X	X	0	0	0	

X (d)'

TABLE 21 (Cont'd)

CANADIAN LEGISLATION ON MATTERS COVERED BY INTERNATIONAL LABOUR CONVENTIONS, AS OF JANUARY, 1938.

Subject and Date of Convention	B.C.	Alta.	Sask.	Man.	Ont.	P.Q.	N.B.	N.S.	P.E.I.	Can.
42. Workmen's compensation for occupational diseases (Revised 1934).....	A	A	A	A	A	A	A	A	0	
43. Regulation of hours of work in automatic sheet glass works, 1934.....	0	0	0	0	0	0	0	0	0	
44. Ensuring benefit or allowances to the involuntarily unemployed, 1934.....	0	0	0	0	0	0	0	0	0	
45. Employment of women on underground work in mines of all kinds, 1935.....	X	X	X	0	X	X	X	0	0	
46. Limiting hours of work in coal mines (revised, 1935).....	0	0	0	0	0	0	0	0	0	
47. Reduction of hours of work to forty a week, 1935.....	0	0	0	0	0	0	0	0	0	0
48. Establishment of an international scheme for maintenance of rights under invalidity, old age and widows' and orphans' insurance, 1935.....	0	0	0	0	0	0	0	0	0	0
49. Reduction of hours of work in glass bottle works, 1935.....	0	0	0	0	0	0	0	0	0	
50. Regulation of certain special systems of recruiting workers, 1936.....	0	0	0	0	0	0	0	0	0	0
51. Reduction of hours of work on public works, 1936.....	0	0	0	0	0	0	0	0	0	0
52. Annual holidays with pay, 1936.....	0	0	0	0	0	0	0	0	0	A
53. Minimum requirements of professional capacity for masters and officers on board merchant ships, 1936 (a).....										X(a)
54. Holidays with pay (Sea), 1936 (a).....										0
55. Shipowners liability in case of sickness, injury or death of seamen, 1936 (a).....										A
56. Sickness Insurance (Sea), 1936 (a).....										0
57. Hours of Work and Manning (Sea), 1936 (a).....										0
58. Minimum age (Sea) (Revised 1936) (a).....										A

TABLE 21 (Cont'd)

CANADIAN LEGISLATION ON MATTERS COVERED BY INTERNATIONAL LABOUR CONVENTIONS, AS OF JANUARY, 1938.

Subject and Date of Convention	B.C.	Alta.	Sask.	Man.	Ont.	P.Q.	N.B.	N.S.	P.E.I.	Can.
59. Minimum age for admission of children to industrial employment(Revised,1937).....	A	A	A	A	A	A	A	A	O	O
60. Age for admission of children to non-industrial employment(Revised,1937).....	O	A	O	A	A	O	O	O	O	O
61. Reduction of hours of work in the textile industry, 1937.....	O	O	O	O	O	O	O	O	O	O
62. Safety provisions in the building industry, 1937.....	O	A	A	A	A	A	O	O	O	O

(a) Under jurisdiction of the Dominion Government.

(b) These fields declared ultra-vires of the Dominion Government by judgments of the Judicial Committee of the Privy Council, January 28, 1937.

(c) Legislation passed implementing the convention but conditional on action being taken by the other provinces.

(d) Although Dominion legislation appears to implement the main articles of the convention ratification has not been registered with the International Labour Office.

(e) Provision for enforcing payment of minimum wage for homework is made under the Factory Acts.

TABLE 22. - TABLE OF COUNTRIES LISTED ACCORDING TO THE
NUMBER OF I. L. O. CONVENTIONS RATIFIED.
(January 1938) (1)

Spain	34	France	20	Japan	13
Chile	33	Norway	20	China	12
Great Britain	30	Sweden	20	Denmark	12
Nicaragua	30	Austria	19	Australia	10
Uruguay	30	Hungary	19	Portugal	9
Bulgaria	29	Poland	19	Switzerland	9
Belgium	27	Germany	17	Brazil	8
Ireland	27	Greece	17	Lithuania	9
Luxemburg	27	Latvia	17	South Africa	7
Cuba	26	Rumania	17	CANADA (2)	4
Colombia	24	Argentina	16	Albania	4
Estonia	21	Finland	16	Dominican Republic	4
Italy	21	Mexico	14	Venezuela	4
Netherlands	21	India	14	Afghanistan	1
Yugoslavia	21	Czechoslovakia	13	Liberia	1

(1) Based on a chart issued by the International Labour Organization.

(2) Excluding the three conventions implemented by the Dominion Parliament in 1935 but declared ultra vires of the Dominion Parliament by the Judicial Committee of the Privy Council.

The lack of uniformity of labour legislation as between provinces has serious implications for internal policy. In the first place, it has to some extent encouraged competitive bidding between provinces for industries at the expense of labour standards. Where industries with poor standards have been encouraged, sore spots in labour relations and social conditions have been created. Once established, these sore spots are very difficult to get rid of. In addition, as long as competitive bidding for industry is allowed by labour legislation, there will be bad feeling among workers and bad feeling between provinces. In the second place, lack of uniformity in labour legislation is in itself a condition that prevents adequate and more uniform standards being set. Among the industrially important provinces, the tempo of labour legislation is conditioned by the most backward province because of the fear of others that their industry will be penalized in interprovincial competition if they get much ahead of that province. Again, lack of uniformity enables businesses to

threaten removal to another province to prevent the enactment of new legislation or the raising or the enforcement of existing standards.

Present conditions in labour legislation, therefore, including difficulties of enforcement, leave the way open for undesirable economic and financial results because they encourage or allow industries with poor standards. The hidden costs of such industries expressed in terms of bad health, relief costs, early unemployability, etc., must be borne by the taxpayer. The bulk of the workers are not protected from undesirable conditions by trade union agreements. The only protection of the mass of unskilled workers lies in legislation.

Viewing the question internationally, the only sure criterion by which other countries can judge whether Canada is one of those countries whose "failure... to adopt humane conditions of labour is an obstacle in the way of other nations (142a) which desire to improve the conditions in their own countries" is the legislation on the Dominion and provincial statute books. If, as is commonly believed, working conditions among Canadian workers are higher than those in most other countries, it would be good business policy for Canada to support the International Labour Organization whole-heartedly by implementing and ratifying its conventions. This is the only way Canada can help to raise standards internationally and put this country on a better competitive level regarding immediate labour costs. At the present time countries that are usually considered backward in labour legislation, like Japan and China, are able to say that they have ratified more conventions than Canada.

The characteristics of labour legislation in Canada, with its deficiencies and gaps, are those of an immature industrial country. This, in fact, is what Canada was until recently. Industry of any importance did not get started

until after the National Policy was formulated in 1879. Even so, Canada was overwhelmingly a producer of primary products until the Great War. The war period saw an enormous industrial expansion and that expansion has on the whole remained. Manufacturing industry is therefore much more important in Canada now than it ever was. Its labour policies directly affect a larger proportion of the citizens of the country than ever before. The economic and financial results of its policies have greater significance than ever before.

These facts make the question of securing more uniform and comprehensive labour legislation in Canada a most important one.

One possible course has been suggested by the Trades and Labour Congress of Canada, namely, the turning over to the Dominion Parliament of jurisdiction in this field. ⁽¹⁴³⁾ A second possibility is to give concurrent powers to the Dominion and provincial legislatures with the Dominion being granted the right to implement the international legislation or to set minimum standards while the provinces retain the residual powers ⁽¹⁴⁴⁾ or the right to enact higher standards. A third possibility is to leave jurisdiction as it is at present, but to work out some mechanism for interprovincial consultation and action to ⁽¹⁴⁵⁾ achieve greater uniformity and higher standards.

(143) This course was recommended in the submissions of the provinces of Saskatchewan, Prince Edward Island, New Brunswick and in large part by Nova Scotia.

(144) This was substantially the plan suggested in the submission of the Province of British Columbia.

(145) Ontario and Quebec favour leaving jurisdiction in the field of labour legislation as it is but make no suggestion regarding interprovincial action.

Appendix I - Legislation Concerning the Minimum Age
for Employment

A. Dominion Legislation

Seamen

Since 1924, the Canada Shipping Act has regulated the employment of young persons at sea in accordance with three conventions of the International Labour Conference of 1920 and 1921 which have been ratified by the Dominion (146) Government. In 1936, the convention fixing a minimum age for the employment of children at sea was revised to raise the age from fourteen to fifteen years but to permit employment at fourteen in cases where an educational or other public authority was satisfied, having regard to the health of the child and the prospective as well as immediate benefit of the child, that such employment would be beneficial.

The Canadian Act provides that no child under fourteen may be employed on any vessel except one on which only members of the same family are employed nor may a boy under eighteen be employed as a trimmer or stoker on a vessel mainly propelled by steam. Neither of these prohibitions applies to work on training ships which is approved and supervised by some public authority. It is stipulated, however, that where a trimmer or stoker is required in a port where no person eighteen or over is available, two boys between the ages of sixteen and eighteen may be employed.

Medical certificates of fitness for the work are required of all persons under eighteen employed at sea and continued employment is conditional on a medical examination at least once a year and the production of a medical certificate.

These regulations of the Canada Shipping Act do not apply to inland waters and there is no statutory regulation of the employment of juveniles on lake vessels in Canada.

(146) Number 7 - Minimum Age (Sea).
Number 15 - Minimum Age (Trimmers and Stokers).
Number 16 - Medical Examination of Young Persons (Sea).

Public Works and Supplies

There is no legislation fixing a minimum age for employment on Dominion public works nor is a condition attached to contracts for supplies to the Dominion government stipulating that no person may be employed below a specified age as in the U.S. Public Contracts Acts, 1936, (Walsh-Healey Act) applying to government contracts for equipment and supplies amounting to \$10,000 or more. The American statute requires manufacturers making such a contract to sign an agreement to abide by the labour standards established by the Act, including the prohibition of the employment of boys under sixteen and girls under eighteen in the production of the supplies contracted for.

Inter-provincial Transportation

The Convention concerning industrial undertakings would also require Dominion legislation forbidding the employment of children under fifteen years of age in connection with inter-provincial transportation.

References

Canada Shipping Act, 1934, c.44, s.279.

B - Provincial Legislation

School Attendance

Compulsory school attendance laws place restrictions on the employment of children of school age during school hours and indirectly prevent their employment during the school term in places where it is not expressly forbidden.

In all the provinces except New Brunswick and Quebec, there is a compulsory school attendance law applying throughout the province; but in Prince Edward Island, the second province in Canada to adopt the policy of compulsory school attendance, the Act still requires attendance only for 60% of the school term except in Charlottetown and Summerside. Quebec has no

school attendance act. New Brunswick has a system of local
(147)
option.

The upper-age limit for compulsory school attendance is twelve in the rural districts of New Brunswick where attendance is required by resolution of the voters; thirteen in Prince Edward Island; fourteen in rural Nova Scotia, Manitoba and in Fredericton, St. John, Newcastle, Chatham, Marysville, Edmundston and Campbellton in New Brunswick; fifteen in Alberta, British Columbia and Saskatchewan; and sixteen in Ontario, in the towns and cities of Nova Scotia, and in such urban districts of New Brunswick as have adopted a by-law to that effect. Higher ages may be fixed by the district in Manitoba and in rural Nova Scotia. In Manitoba, too, a child who is not employed is required to attend school up to sixteen years of age.

In all cases, a child is freed from further attendance after he has attained a certain standard - matriculation or its equivalent in Ontario; the completion of the public school course or Grade 8 in Alberta, British Columbia, Manitoba, Prince Edward Island and Saskatchewan; Grade 9 in Nova Scotia; and Grade 7 in New Brunswick. In Saskatchewan, a

(147) The system of local option regarding school attendance was copied from the English Education Act of 1870 by British Columbia (1873), Nova Scotia (1883), and New Brunswick (1906). It was abandoned in British Columbia in 1876 and in Nova Scotia in 1915 for cities and towns and in 1921 for rural districts. In New Brunswick it has been retained for rural districts and for cities and towns with the exception of Fredericton, St. John, Newcastle, Chatham, Marysville, Edmundston and Campbellton. In these towns, by special legislation, attendance at school is compulsory up to 14 years of age, with no provision for exemption, and employment during school hours is forbidden. The resolution which, the New Brunswick Act stipulates must be submitted annually to the voters in rural districts or to the city or town councils until adopted, would make attendance at school compulsory in the country for 60% of the term or in urban centres for 120 days of the school year subject to certain exemptions. Where such a resolution is adopted in a town or city, employment during school hours is prohibited except as provided in the Act.

child is not required to attend school if there is no school within a specified distance unless provision is made for transportation.

Some exemption is permitted under all the statutes except that of British Columbia, but in all but those of Prince Edward Island and British Columbia, the employment of children of school age is prohibited during school hours unless they are exempt from attendance under the statute. In Alberta, Manitoba and Ontario, a child may be exempted from school attendance if his services are required in husbandry or in household duties or for the maintenance of himself and others. In Manitoba this provision applies only to children over twelve. The period of such exemption in these provinces is limited to six weeks in the school term. In Ontario a child between fourteen and sixteen years of age may be granted a home or work permit if his services are required about his home or in some gainful occupation. Such permit frees him from any school attendance. Table 23 shows the number of permits annually granted to children of this age in Ontario. Permits are not required for such children in rural districts who are needed at home or on their parents' farms. In Saskatchewan a child who has to support himself or others is exempt from school attendance.

Poverty and inability to procure suitable clothing is a statutory reason for exemption from school attendance in New Brunswick, Nova Scotia and Prince Edward Island. Further, as pointed out above, in the rural districts of New Brunswick and Prince Edward Island, children are required to attend school only for 60% of the school term. In cities and towns of New Brunswick where the necessary by-law has been passed, attendance is required for 120 days in the year. Further exemption is permitted both in Nova Scotia and New Brunswick

TABLE 23

ATTENDANCE AND EXEMPTIONS OF PUPILS OF ADOLESCENT AGE (14 and 15 YEARS) IN ONTARIO

Year	Total Enrolment Pupils of Adolescent Age	Exemptions under the Adolescent School Attendance Act.					Total Exemption	
		(a)			(b)			
		Home Permits		Employment Certificates				
		Urban	Rural	Total	Urban	Rural	Total	
1929	100,494	886	302	1,188	3,888	479	4,367	5,555
1930	83,821	984	385	1,369	2,831	320	3,151	4,520
1931	85,586	526	133	659	1,203	179	1,382	2,577
1932	87,074	820	392	1,212	1,317	223	1,540	2,572
1933	81,269	1,041	401	1,442	1,425	336	1,761	3,203
1934	82,106	1,190	306	1,496	1,300	276	1,576	3,072
1935	102,470	1,292	391	1,683	1,748	297	2,045	3,728
1936	102,741	1,475	787	2,262	1,996	294	2,280	4,542

-186(a)-

(a) Permission to work in or about the home.

(b) Permission to engage in gainful occupation.

(c) Enrolment as of last school day in May.

(d) Birth-rate higher in 1919-1921.

except in those towns in New Brunswick to which special
(148)
legislation applies.

Tables 24 and 25, based on the Censuses of 1921 and 1931, indicate the proportion of children between seven and fourteen years of age, inclusive, who did not attend school during those years, and the proportion who were at school only for seven or more months of the school year. Table 26 shows the proportion of persons, ten years of age and over, who were reported as illiterate in 1921 and 1931.

Table 24 - Per Cent of Children 7 to 14 Years of Age Not
At School in 1921 and 1931 by Rural and Urban
Districts (a)

	Rural		Urban	
	1921	1931	1921	1931
Canada	13.8	9.1	7.5	4.6
Prince Edward Island	12.7	6.8	8.7	5.3
Nova Scotia	15.8	8.0	8.2	4.1
New Brunswick	19.8	11.3	8.9	4.4
Quebec	16.5	14.3	10.3	7.9
Ontario	10.3	6.5	6.3	2.7
Manitoba	13.2	8.3	4.2	1.9
Saskatchewan	13.5	6.7	4.9	2.5
Alberta	13.1	6.9	5.2	1.9
British Columbia	10.1	8.0	5.1	2.7

(a) Figures for 1921 are from Illiteracy and School Attendance, Dominion Bureau of Statistics, 1926, p.97; figures for 1931 calculated from Census, 1931, Vol.4, p.1388.

(148) In Nova Scotia, a child over twelve whose services are required by his parents in husbandry or in some necessary employment may be freed from school attendance for not more than an aggregate of six weeks in the year. This provision is similar to that in Ontario and the three Prairie Provinces. To a child over thirteen in Nova Scotia who satisfies the school board that he needs to go to work and that he can get a job, a permit may be given on condition that he obtains a medical certificate attesting his fitness for the work and that he attend evening classes. The condition as to a medical certificate appears not to be enforced.

In towns of New Brunswick to which a school attendance by-law applies, under which the age limit is sixteen years, a child over thirteen is not required to attend school for more than 60 days in 14 consecutive weeks if he has to support himself or others. Attendance is not compulsory for a child over fourteen who has attended regularly for "a reasonable period" and is "reasonably proficient in writing, reading and the performance of simple arithmetical problems".

Table 25 - Per Cent of Children 7 to 14 Years of Age
in the Rural and Urban Population who
Attended School for 7 or more Months in
1921 and 1931 (a)

	Rural		Urban	
	1921	1931	1921	1931
Canada	72.3	85.3	89.3	93.8
Prince Edward Island	65.4	83.2	86.7	91.3
Nova Scotia	67.2	83.3	88.7	93.7
New Brunswick	57.9	79.2	88.1	94.3
Quebec	80.4	81.0	85.8	89.9
Ontario	81.4	90.2	90.4	95.9
Manitoba	73.0	86.8	92.8	97.1
Saskatchewan (b)	58.2	84.6	90.7	96.4
Alberta (b)	60.7	87.4	91.4	97.2
British Columbia	83.0	88.6	91.7	95.5

(a) Calculated from Table 83, Census of Canada, 1931, Vol.IV, pp. 1366-84.

(b) In Alberta and Saskatchewan in 1921 the proportion who attended school for seven months or more out of the period of nine months prior to June 1, when the Census was taken, is somewhat lower than if the figures related to a later month owing to the custom in some districts of having "summer schools" and holidays during the winter.

Table 26 - Per Cent of Persons 10 Years of Age and Over
in the Rural and Urban Population in 1921
and 1931 who were Illiterate. (a)

	Rural		Urban	
	1921	1931	1921	1931
Canada	7.16	4.77	3.11	2.32
Prince Edward Island	3.40	2.65	1.88	2.38
Nova Scotia	6.54	5.31	3.24	2.80
New Brunswick	10.09	9.13	2.08	2.25
Quebec	8.75	7.29	4.33	3.25
Ontario	3.88	2.70	2.33	1.76
Manitoba	9.54	5.29	4.07	2.36
Saskatchewan	7.47	4.19	2.30	1.99
Alberta	7.18	3.38	2.01	1.51
British Columbia	9.01	3.70	3.17	2.32

(a) From Illiteracy and School Attendance in Canada, 1921, p.35 and from Dominion Bureau of Statistics.

Except in Ontario and the rural districts of Nova Scotia, there was no change in the standards laid down in the school attendance acts in that decade and there is evidence to indicate that the increased attendance in 1931 was due in considerable measure to the lack of opportunities for employment in 1931 rather than to the positive factors of better enforcement of the laws or greater appreciation of the value to the child and the community of regular and continued attendance at suitable schools for as long as possible and as long as mental capacity warrants. The importance of this latter consideration is being emphasized by existing conditions in Canada, the United States and Great Britain which show a shortage of skilled workers and a heavy surplus of unskilled workers. The children who leave school as soon as the law permits or who attend so irregularly that they become retarded and fail to profit by instruction are being handicapped for the future whether it be in agriculture or in other industries. They are among the first to be let out of employment and among the first to become unemployable.

References: (149)

Alberta: School Attendance Act, R.S. 1922, c.55.

British Columbia: Public Schools Act, R.S. 1936, c.253, s.163.

Manitoba: School Attendance Act, C.A. 1924, c.164.

New Brunswick: Act respecting Compulsory Attendance at School, R.S.1927, c.53; 1932, c.26; 1933, c.28.

Nova Scotia: Act to amend Chapter 60; R.S. 1923, "The Education Act", 1933, c.25.

Ontario: School Attendance Act, R.S. 1927, c.332; 1930, c.63, ss.25,26,27; 1932, c.42; Adolescent School Attendance Act, R.S.1927, c.333.

Prince Edward Island: Public School Act, 1920, c.6; 1921, c.3; 1928, c.13; 1933, c.8.

Saskatchewan: School Attendance Act, R.S.1930, c.132; 1936,c.71.

Yukon: School Ordinance, 1914, c.79.

(149) In all cases references are only to statutes containing sections on the employment of children.

Agriculture.

There is no law in Canada directly prohibiting the employment of children in agriculture. In the provinces where there is a compulsory school attendance law, any employment during school hours is prohibited except under the conditions laid down in the act. These conditions are outlined in the section on School Attendance. Under all the acts, except that of British Columbia, exemption is given for farm work for a limited period.

According to the 1931 Census, the number of boys under eighteen years of age employed at farm work either as wage-earners or on their parents' farms increased to 99,757 from 93,246 in 1921. There were 4,128 boys between 10 and 13 years of age working on farms "for the major portion of the year", of whom 231 were away from home. Other "wage-earners" included 836 boys 14 years old, 2,500 who were 15 years old, or 3,567 boys under 16 years of age working regularly for wages on farms other than their parents'. Of these, 1,276 were in Ontario and 1,021 in Quebec.

The figures as to wage-earners under sixteen represent a considerable decrease from the 1921 Census, but it is likely that in neither year do the figures represent the full extent of the employment of children either individually or as members of a family employed at farm work, much of which is for only part of the year in specialized crop districts where tobacco, fruit or vegetables are grown, or in connection with the preparation of fruits and vegetables for canning.

In addition to the children employed as "hired help", there were in Canada 29,723 boys under sixteen working on their home farms, 5,672 in Ontario and 13,886 in Quebec. Of these, 441 in Ontario and 2,635 in Quebec were under fourteen years of age. To this group, too, should be added a considerable number of children whose work at home is not reported to the census enumerator for one reason or another, who are not at work "for

the major portion of the year" or who are kept at home irregularly to help about the farm. Falling behind in their classes, such children come to dislike school and cease attending as soon as possible.

International Convention

A Convention of the International Labour Conference of 1921, (No.10), prohibits the employment of any agricultural undertaking of children under fourteen years of age during school hours. For purposes of practical vocational instruction, the periods and hours of school attendance may be so arranged as to permit employment on light agricultural work and in particular on light work connected with the harvest, provided that such employment does not reduce the annual period of school attendance to less than eight months. No Canadian province has legislation complying with the terms of this Convention.

Mines

Table 3, page 17, shows the minimum age, province by province, for the employment of children in or about metal mines and coal mines.

International Convention

Mining operations are included in the term "industrial undertakings" used in the International Labour Convention of 1919 as revised in 1937. Its application in Canada would therefore require the prohibition of employment under 15 years of age in mines both above and below ground. Amendments in existing laws as regards the minimum age would be necessary in New Brunswick, Quebec, Manitoba, and the Yukon and, possibly, in other provinces also in respect to coverage. The convention applies to quarries and all places where minerals are extracted from the earth.

In Alberta, British Columbia, New Brunswick, Ontario, Quebec and Saskatchewan, statutes forbid the employment of girls

or women about mines except in domestic or clerical work. There is no similar provision in the mining statutes of Nova Scotia but it is probable that women never were employed underground in the mines of that Province. A Draft Convention (No.45) of the International Labour Conference of 1935 prohibits the employment of any girl or woman in underground work. It would be a simple matter to enact this Convention in Nova Scotia, Manitoba, and Prince Edward Island and the Yukon Territory where women's work in mines is not expressly prohibited.

References

Alberta, Coal Mines Act, 1930, c.24; 1931, c.39;
Quarries Regulation Act, 1935, c.70 (not proclaimed
in force).

British Columbia, Coal Mines Regulation Act, R.S.1924,
c.171; Metalliferous Mines Regulation
Act, 1931, c.46.

Manitoba, Mines Act, 1930, c.27.

New Brunswick, Act to amend Mines Act, 1933, c.23.

Nova Scotia, Coal Mines Regulation Act, 1927, c.1;
Metalliferous Mines and Quarries Act,
1927, c.2.

Ontario, Mining Act, 1930, c.8.

Quebec, Mining Act, R.S. 1925, c.80.

Saskatchewan, Mines Act, R.S. 1930, c.222, Order-in-
Council 1049/35, Sept. 13, 1935;
Regulations under Mines Regulation Act,
1934, c.46.

Yukon, Miners' Protection Ordinance, C.O. 1914, c.65.

Factories

In all provinces but Prince Edward Island there is an Act regulating the employment of children in factories.

The definition of a factory varies slightly in the different statutes, but, in all except that of New Brunswick, it includes all places where mechanical power is used and, in general, any building or workshop to which the employer has the right of access and in which any manual labour is employed in making, altering or repairing any articles. In places where

mechanical power is not used, the legislation in British Columbia and Manitoba is restricted to establishments employing more than three or more persons, and in Ontario five or more. The Quebec Industrial and Commercial Establishments Act permits the Lieutenant-Governor-in-Council to except establishments from the operation of the Act. The Act of Nova Scotia applies only where mechanical power is used unless expressly declared otherwise by the Lieutenant-Governor-in-Council. The New Brunswick Act of 1920, which is now in effect, and the Act of 1937 which, when proclaimed, will replace it, apply only where ten or more persons are employed. The 1920 Act does not include canneries. The 1937 statute applies to canning factories but the Governor-in-Council is given power to exempt "for a temporary period or otherwise" any industry or factory in order "to meet seasonal conditions or where special circumstances exist".

The Factories Act of each province, except New Brunswick, prohibits the employment of children below a certain age. These minimum ages are shown in Table 3, Chapter I.

International Convention

The International Labour Convention concerning the minimum age for employment in industrial undertakings was revised in 1937 to fix the minimum age at fifteen. Regarding factory employment, only Alberta, British Columbia and Manitoba comply with this provision. When the 1937 Factories Act of New Brunswick is proclaimed, it will bring that Province into line with the Convention, provided that no exemption is permitted under the section of the Act giving the government power to grant exemptions.

References:

Alberta, Factories Act, 1926, c.52.

British Columbia, Factories Act, R.S. 1936, c.92.

Manitoba, Factories Act, R.S. 1913, c.70.

New Brunswick, Factories Act, R.S. 1927, c.159;
Factories Act, 1937, c.2 (not yet in force).

Nova Scotia, Factories Act, R.S. 1923, c.160.

Ontario, Factory, Shop and Office Building Act, 1932, c.35.

Quebec, Industrial and Commercial Establishments Act,
R.S. 1925, c.182.

Saskatchewan, Factories Act, R.S. 1930, c.220.

Shops

Employment in shops is much less extensively regulated in Canada than employment in mines and factories. Only in Alberta, Manitoba, Ontario and Quebec, does the law lay down a minimum age for employment in commercial establishments.

This situation is all the more important because, although the School Attendance Act in those provinces in which attendance is compulsory under the law, are, in themselves, fairly effective in preventing the employment of children of school age in factories through the prohibition of employment during school hours, they give little or no protection to such children in the usual occupations followed by them in or about shops. Apart from street trades, one of the most common forms of employment of school children before and after school hours, and, in some cases, even during the lunch hour, is doing odd jobs or running errands in connection with shops. Only in Manitoba has any legislative control been exercised over the number of hours a school child may work in addition to his hours at school.

British Columbia, New Brunswick, Nova Scotia,
Prince Edward Island and Saskatchewan.

In these provinces there is no statutory minimum age
(150)
for employment in shops.

(150) The Shops Regulation Act of British Columbia stipulates a minimum age of fourteen for work in bake-shops.

Ontario and Quebec.

No child under fourteen years of age may be employed in a shop. In these two provinces, the limitation on the employment of children between fourteen and sixteen years of age, except with a permit from the school attendance officer in Ontario between 8 A.M. and 5 P.M., or with a certain educational standard in Quebec, applies to shops as to other places of employment. There is some doubt as to the enforcement of these provisions, more particularly as regards employment before and after school hours in Ontario.

Alberta.

In towns of over 5,000 population (that is, in Edmonton, Calgary, Lethbridge and Medicine Hat), no child under fifteen may be employed in a shop.

Manitoba.

No child under fifteen years of age may be employed in a shop. This limit is imposed by an order of the Minimum Wage Board, as it is for factory work, and applies to retail and wholesale stores including mail-order houses. In the Manitoba Shops Regulation Act, no minimum age for employment in a shop was fixed but the Act provided that a child under fourteen could be employed only if he had a certificate exempting him from school attendance and permitting such employment. Working hours in such cases were limited to eight a day and forty-eight a week. A boy over thirteen who was attending school could, under the Shops Act, be employed for not more than two hours on a school day and not more than eight hours on Saturdays or school holidays. These provisions appear to have been superseded in respect to retail and wholesale establishments by the Minimum Wage Board's order fixing fifteen years and permitting no exceptions. As the word "shop" in the Manitoba statute, however, applies to any premises used in connection with a messenger service, they are

still in effect for messengers in such places.

International Convention.

Convention No.33 of the International Labour Conference (1932) was designed to regulate the employment of children in any occupations or industries not covered by the Conventions relating to industrial undertakings, employment at sea, or in agriculture. As revised in 1937, this Convention stipulates that children under fifteen or children over fifteen who are still required by law to attend primary school shall not be employed in any work to which the Convention applies. The exceptions allowed relate to work outside school hours, on the streets or in places of amusement and will be referred to in the sections on Employment of School Children, Street Trades and Places of Amusement.

As far as shops are concerned, Manitoba implements the provisions of the Convention on the whole, though, it is to be noted, by order of the Minimum Wage Board and not by statute. Most of the remaining Canadian provinces have no statutory minimum age for employment in shops whatsoever.

References:

Alberta, Factories Act, 1926, c.52.

Manitoba, Shops Regulation Act, C.A. 1924, c.180;
Minimum Wage Order No.3, 1937.

Ontario, Factory, Shop and Office Building Act,
1932, c.35.

Quebec, Industrial Establishments Act, R.S. 1925,
c. 182; 1934, c.55.

Street Trades.

Street work by children has been one of the last forms of juvenile labour to be given attention by legislatures. Only in Ontario is there a law applying throughout the Province which directly prohibits such work by children below a specified age.

It appears to be the consensus of opinion among those especially concerned with the employment of children that the

work of selling newspapers, magazines and small wares about the streets and in public places is one of the most undesirable forms of juvenile employment. The work of boys as newspaper carriers, carrying newspapers along a regular route in the residential districts of the city is to be sharply distinguished from the selling of newspapers in the downtown districts. When carried on by school children, street selling imposes too great a strain on their physical condition through exposure to all kinds of weather, long, and often late hours after the hours in school, and, in the case of magazines particularly, through carrying heavy loads. In addition, street selling tends to have a demoralizing effect. Children learn to give short change, to cheat in other ways and to gamble or beg. In the larger cities they are exposed to the unwholesome influence not only of the street but of taverns and other places into which they go in order to sell their wares. Nevertheless it is difficult to rouse the general public to an understanding of the evils of this kind of work and they feel only the appeal of the small boy trying to make a few cents.

Most of the law regarding such employment is to be found in the Children's Protection Acts or Child Welfare Acts, as they are called in the three Prairie Provinces. In general, there are three types of regulation under existing law; first, municipalities may be empowered to regulate child labour in the streets by by-law; second, Children's Aid Societies may take "neglected children", among whom may be children in street trades, into custody; third, a direct prohibition of the employment of children in street trades may be laid down in the statute.

The earliest legislation in Canada affecting street trades carried on by children applied only to cities and gave the civic authorities general power to make by-laws to regulate such work. In all the provinces except British Columbia and

Prince Edward Island, municipal councils have this power. In Nova Scotia, such a by-law must be approved by the Lieutenant-Governor-in-Council, but an amendment to the Halifax City Charter in 1937 gives the city council power to regulate, by a licensing system, the sale in the streets of newspapers and magazines.

In Quebec, no child under sixteen who is unable to read and write fluently may be employed as a newsboy or vendor of articles in public places unless he is attending night school, and then only up to 8 P.M.

The New Brunswick Children's Protection Act, enacted in 1930 but not yet proclaimed in force, provides that no girl under twelve and no boy under ten may engage in a street trade without a licence from the Judge of the Juvenile Court or County Court Judge; no child under fourteen may be so employed in school hours and no boy under sixteen may be employed in a street trade between 10 P.M. and 6 A.M.

The last two provisions are also in the law of Ontario, but in Ontario no boy under twelve and no girl under sixteen may lawfully engage in a street trade at any time.

In Alberta, Manitoba and Saskatchewan, the law provides for a licensing system under municipal by-laws. In none of these provinces may a licence for street trading be given to any girl, or to a boy under twelve, or to a boy from twelve to fourteen years without his parents' consent. In Alberta and Manitoba, no licensee under eighteen may work after 8 P.M. from December to February or after 9 P.M. from March to November. In Saskatchewan this provision as to night work applies to boys under sixteen.

In Manitoba, any child under twelve years of age selling in the streets or public places at any time or any child under fourteen selling in such places in school hours or after 9 P.M. may be apprehended as a "neglected child". In Alberta, any girl of any age, or any boy under twelve selling in the

streets or public places, or any boy under fifteen in school hours, or any boy under sixteen between 9 P.M. and 8 A.M. may be apprehended as a "neglected child".

Apart from the provision in the laws of Ontario and the three Prairie Provinces that a child selling on the streets may be apprehended as a "neglected child" by an officer of the Children's Aid Society, the enforcement of the laws relating to street selling is left to the local police. In these four provinces a penalty may be imposed on any one who "causes for procures" any child to sell articles on the street contrary to the law. It is a matter of common observation that the laws on street selling are not strictly enforced. (151)

International Convention.

The International Convention applying to non-industrial employment as revised in 1937, stipulates that, with certain exceptions, children under fifteen, and those over fifteen who are required by law to attend primary school, may not be employed in any occupation to which the Convention applies. But it is provided, further, that the national law implementing the Convention must fix a higher age or ages than these for persons employed in street trading, or in places to which the public have access, or in stalls outside shops. In order to ensure the enforcement of the Convention, the law must provide for an adequate system of inspection and supervision and require employers to keep registers of all persons under eighteen years of age employed by them in any employment to which the Convention applies. Further, suitable means must be provided for facilitating the identification and supervision of young persons

(151) In Britain, no child under sixteen may engage in street trading of any kind, but local by-laws may permit parents to employ their children below that age on such work or may forbid such employment up to eighteen years of age.

employed in street trades.

In no Canadian province is there legislation implementing this Convention regarding street trades. Such legislation as does exist does not incorporate the provisions for enforcement laid down in the Convention, and the Canadian regulations tend to be laxly enforced.

References:

Alberta, Child Welfare Act, 1925, c.4 (proclaimed in effect from November 1, 1931); 1931, c.26; 1932, c.23; 1935, c.52.

Manitoba, Child Welfare Act, C.A. 1924, c.30; 1929, c.6; 1936, c.6.

New Brunswick, Children's Protection Act, R.S. 1927, c.63; to be repealed by Children's Protection Act, 1930, c.13, when latter is proclaimed.

Nova Scotia, Children's Protection Act, 1930, c.41.

Ontario, Municipal Act, R.S. 1927, c.233, s.431; Children's Protection Act, R.S. 1927, c.279.

Quebec, Cities and Towns Act, R.S. 1925, c.102; Industrial and Commercial Establishments Act, R.S. 1925, c.182, ss.9, 11.

Saskatchewan, Child Welfare Act, R.S. 1930, c.231.

Places of Amusement.

In all the provinces but New Brunswick and Prince Edward Island there is some legislation in force designed to regulate the employment of children in certain places of amusement. (152)

In Nova Scotia, the only statutory provision is found in the Halifax City Charter under which an ordinance of that city forbids the employment of boys under eighteen in public billiard-rooms and bowling-alleys.

(152) In New Brunswick, the Children's Protection Act was enacted in 1930 but it has not yet been proclaimed. This statute would prohibit the employment of a child under fourteen in a bowling-alley, billiard-room or pool-room and of any child under sixteen in such places after 10.30 P.M.

In Quebec, no child under fourteen may be employed in a theatre, moving-picture hall, or amusement hall and no child under sixteen who is unable to read or write fluently may be employed in such place unless he is attending night school. In the latter case, he may not be employed after 8 P.M.

In British Columbia, municipal councils may make by-laws regulating or prohibiting the employment of girls and of boys under eighteen in bowling-alleys, billiard-rooms or pool-rooms. In any part of the province outside a municipality, the employment of any child under eighteen in a pool or billiard-room is prohibited.

In Ontario, under the Factory, Shop and Office Building Act, as amended in 1932, the word "shop" is defined to include a place "where services are offered for sale". In such places, the minimum age for employment is fourteen at all times, and, except with a permit from the school attendance officer, sixteen between 8 A.M. and 5 P.M.

In Manitoba, municipal councils may make by-laws regulating the employment of boys in bowling-alleys and providing for a licensing system for children in street trades. No licence may be given to a boy under twelve, or to a boy under fourteen without his parents' consent and no person under eighteen may work after 8 P.M. from December to February or after 9 P.M. from March to November. Under a Minimum Wage Order of July 26, 1919, in Manitoba, girls under eighteen may not be employed as ticket sellers, ushers or cleaners in places of amusement in the cities of Winnipeg, St. Boniface or St. James. (153)

In Alberta, employment in a billiard-room or bowling-alley is prohibited for any person under eighteen. There is a provision in the Child Welfare Acts of both Alberta and Manitoba,

(153) The Alberta Minimum Wage Board in 1923 imposed a similar restriction on the employment of girls under eighteen in theatres, moving-picture houses, music-halls, dance-halls or cabarets in cities and towns but this clause was omitted from the revised order of the next year.

copied from the English law, by which no child under sixteen may be employed in any occupation likely to injure life, limbs, health, education or morals.

In Ontario and the three Prairie Provinces, a similar type of law has been followed in respect to employment of children in certain places of public entertainment. This legislation provides that a penalty may be imposed on any person causing a child, under sixteen in Ontario and Saskatchewan, under seventeen in Alberta, or under eighteen in Manitoba, to be in a circus, theatre, or other place of amusement for the purpose of performing or selling articles. In these four provinces, however, a child over ten may be licensed to take part in a public entertainment by some public authority, under proper safeguards.

International Convention.

The International Labour Convention covering non-industrial employment, as revised in 1937, prohibits employment under fifteen years of age or for those over fifteen who are required by law to attend school. This Convention applies to places of amusement but it is stipulated that in the interests of art, science or education, the law giving effect to the Convention may enable permits to be granted in individual cases for children to appear in any public entertainment or as actors or in the making of films, provided that strict safeguards are laid down for their health, physical development and morals, and for their continued education. No exception is made for employment which is dangerous to life, health and morals, such as employment in circuses, variety shows or cabarets.

Provincial legislation in Canada on "Places of Amusement" is spotty and in no province can it be said to measure up to the provisions of the International Convention.

References:

Alberta, Billiard-room Act, R.S. 1922, c.299; Child Welfare Act, 1925, c.4 (in force November 1, 1931); 1931, c.26.

British Columbia, Municipal Act, R.S. 1936, c.199, s. 59 (120); Pool-rooms Act, R.S. 1936, c. 219.

Manitoba, Child Welfare Act, C.A. 1924, c. 30; 1929, c. 6.

New Brunswick, Children's Protection Act (not in force) 1930, c.13.

Ontario, Children's Protection Act, R.S. 1927, c. 279; Factory, Shop and Office Building Act, 1932, c.35, ("Shop" includes places where "services" are offered for sale).

Quebec, Industrial Establishments Act, R.S. 1925, c. 182, ss. 8, 11, as amended 1934, c. 55.

Saskatchewan, R. S. 1930, c. 231.

Employment of School Children.

In the provinces where school attendance is required by law, except British Columbia and Prince Edward Island, the school attendance act stipulates that no child of compulsory school age may be employed during school hours unless he is exempt from attendance at school under the statute. The conditions for such exemptions have already been outlined in the section on School Attendance. This section is concerned with children who are required to attend school but who are employed outside school hours or on school holidays.

Manitoba is the only province in Canada which has attempted directly to limit the employment of children before and after school. Since 1916, the Shops Regulation Act of Manitoba, which applies to any premises used to furnish a messenger service as well as to retail and wholesale stores, has forbidden the employment of any child attending school for more than two hours on any school day or for more than eight hours on any school holiday.

The Ontario Adolescent School Attendance Act, it may be noted, prohibits the employment of any child from fourteen to sixteen years of age between the hours of 8 A.M. and 5 P.M. unless he holds a permit from the school attendance officer. This extension of the prohibited hours should operate to prevent the employment of children of these ages outside school hours.

In Great Britain, under the Children and Young Persons Act, 1933, no child under twelve may be employed at any time in any place. No child under fourteen may be employed before the close of school on any school day, or for more than two hours on any school day or on Sunday. By-laws by local authorities, however, may permit employment before the close of school on school days for not more than one hour. These provisions were first enacted in the Education Act, 1918.

International Convention.

The International Labour Convention applying to non-industrial employment, as revised in 1937, permits the employment of school children over thirteen years of age outside school hours on "light work" which is not harmful to their health or ~~normal~~ development or such as to prejudice their attendance at school or their capacity to benefit from the instruction given there. But no child under fourteen may be employed on light work for more than two hours a day on a school day or a school holiday, or spend more than a total of seven hours a day at school and on light work combined. Light work in such cases must be prohibited on Sunday and legal public holidays and during the night. In the case of children under fourteen, there must be no work between 8 P.M. and 8 A.M. In the case of children over fourteen who are required by law to attend school, the national law may determine the number of hours per day that may be spent at light work during the school term and there must be no work for at least twelve hours at night; but the period

may be determined by the national law. During the school holiday time, children over fourteen who are required to attend school when school is in session may be employed in accordance with the conditions laid down in the national law.

The Convention stipulates that in countries where there is no compulsory school attendance law, the time spent on light work, which must not be harmful to health or normal development, may not exceed four and one-half hours a day.

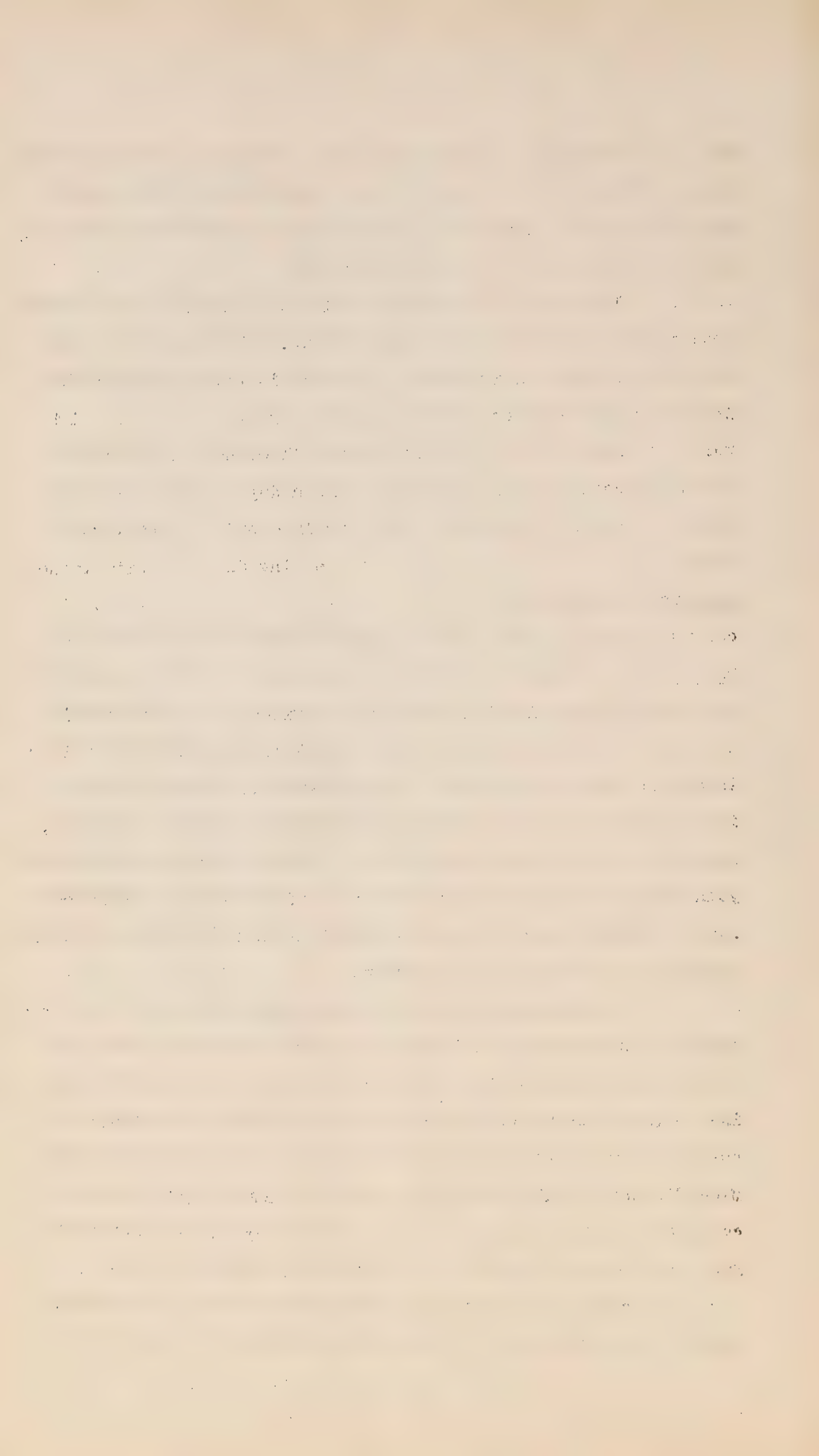
Legislation on these points in Canada is practically non-existent. The only legislation dealing directly with these matters is that of Manitoba, and it falls short in some particulars.

Dangerous Occupations.

Where a legal minimum age is fixed for employment in any country, a higher age than that applying to most occupations is usually established by statute or regulation for employment in certain other occupations which involve some hazard to life, health or moral development. It is generally accepted that young persons are more liable to industrial accidents and more susceptible to disease than adults. This is recognized by making it unlawful to employ young persons in occupations or establishments in which there is special danger. There is little effective legislation of this sort in Canada.

The International Labour Convention applying to non-industrial employment, as revised in 1937, stipulates that the national law implementing the Convention must fix a higher age than fifteen, or than the age up to which school attendance is compulsory, if it is higher than fifteen, for the admission of young persons to any employment which, "by its nature, or the circumstances in which it is to be carried on, is dangerous to the life, health or morals of the persons employed in it".

Quebec took the first legislative action in Canada to prevent the employment of children in dangerous occupations in



1890 following the report of the Royal Commission on Capital and Labour. The Industrial Establishments Act of Quebec was amended in respect to this point twice in that year. The second amendment is still part of the Act and gives to the Lieutenant-Governor-in-Council power to prohibit the employment of boys under sixteen and girls under eighteen in any occupations deemed dangerous or unwholesome. A list of such occupations was drawn up in 1890 and included certain employments in which there was risk from fire, accidents or injurious fumes, gases, odours or dusts.

The Ontario Factory Act was amended in 1895 to add a similar section. When factory laws were enacted subsequently in the other provinces, except Prince Edward Island, this clause was inserted in all but that of Alberta.

In New Brunswick, the Factory Act in force at the present time contains such a clause but it differs from that of the other provinces in applying to boys under fourteen instead of under sixteen. The similar clause in the New Brunswick Factories Act, 1937, which is to come into effect on proclamation, relates to both boys and girls under eighteen.

In none of the provinces, however, except Quebec, has any action been taken under the authority of this section and when the first Factories Act in Alberta was enacted in 1917, such a section was not even included.

In Quebec, the Industrial Establishments Act was amended in 1934 to enable the Lieutenant-Governor-in-Council to prohibit, not only the employment of boys under sixteen and girls under eighteen in occupations deemed dangerous or unwholesome, but also to forbid the work of boys under eighteen and of all girls or women in occupations considered to involve risk to their life or health. Following this enactment, the Quebec government revised the regulations applying to boys under sixteen

and girls under eighteen and made other regulations forbidding the employment of boys under eighteen and girls and women in certain other occupations. (154)

In 1937, a new statute was enacted further amending the law on this point. It provides that notwithstanding any provision to the contrary, the Lieutenant-Governor-in-Council may designate establishments in which no children under sixteen may be employed and also work in which no young person under eighteen may be employed. No regulations have yet been made under the Act of 1937.

In Alberta, the codes for the automotive industry and for the cleaning and dyeing industry which were approved under the Trade and Industry Act, 1934, prohibit the employment of any person under sixteen in any establishment covered by the code.

The Children's Protection Acts of New Brunswick and Nova Scotia provide that a child under sixteen employed in a brewery, shop or other place where intoxicating liquors are made, bottled or sold, may be taken into custody as "neglected". In Alberta and British Columbia, Orders-in-Council under the Government Liquor Act prohibit employment of those under twenty-one; and in Manitoba, Ontario and Saskatchewan the Liquor Control Acts prohibit any person under twenty-one being employed in any way in connection with the sale, handling or serving of beer on any licensed premises.

(154) Under the regulations, as revised in 1934, boys under 16 and girls under 18 may not be employed in boxing baking powder, cleaning wools, beating carpets, soldering cans, grinding cutlery, dry polishing crystal, iron, brass or horn or in polishing marble, mixing and dipping in a match factory, handling iron oxide, sorting rags, varnishing in a rubber works, or tinning wire or sheet iron utensils. No young persons under 18 and no women may work in establishments where arsenic, white lead or paris green is used or where iron, brass, lead or zinc is smelted or rolled, or where cement, lime, stone or plaster is crushed, or where there are fumes from muriatic, nitric or sulphuric acid or from galvanizing iron, or where there is vapour from mercury in the plating of mirrors.

In the Alberta and Manitoba Child Welfare Acts, there is a general provision copied from the Employment of Children Act, 1903, of the United Kingdom, but which now stands in the English Education Act, 1921, stipulating that no person under sixteen may be employed in any occupation likely to injure life, limbs, health, education or morals. No authority appears to be directly charged with the enforcement or supervision of this section of the Alberta and Manitoba Acts except that as "neglected" children, any children so employed may be taken care of by the Children's Aid Societies.

In Great Britain, the clause applies only to children of compulsory school age who are under the supervision of the school medical officer, and the local educational authority has power to enforce the provision. But in Britain, dangerous trades, not being street trades or work carried on at night or in places of amusement, are regulated with a view to the protection of persons under eighteen by the Mines Act, Factories Act or other statutes applying to factories,⁽¹⁵⁵⁾ or through the regulations made under their authority. Under the factory law, a medical certificate from a physician appointed for the purpose is required before any child under sixteen may be employed in a factory; the employment of persons under eighteen in connection with certain processes is prohibited; the employment of girls under eighteen in certain other processes is prohibited; and a periodic medical examination of young persons employed in specified processes is necessary. By regulation, new trades may be added to the list to which these restrictions apply.

In no province in Canada does the law provide for regular medical inspection of industrial establishments as in Britain. Neither do the factory laws of the Canadian provinces stipulate that some members of the factory inspectorate must be

(155) Now consolidated in the Factories Act, 1937, c.67 effective July 1, 1938.

trained in medicine, physics, chemistry, or engineering of any kind. With greater industrial development and the increasing use of new and dangerous machines and new processes and substances, often poisonous, adequate inspection of factories in some departments, at least, can be carried on only by highly trained technical experts.

Measures are required in Canada for the welfare of all workers, adult and juvenile, but in most industrial countries today special precautions are taken as regards young persons by requiring them to undergo a medical examination before employment and, in some cases, a periodic examination thereafter until they have reached a specified age. There is no effective provision of this sort in Canada.

In Quebec, the Industrial Establishments Act still retains a clause enacted in 1894 providing that the factory inspector might request one of the "sanitary physicians", who were appointed to give evidence as to the age of children for whom no certificates of age were available, or any other physician, to examine any girl under eighteen or boy under fourteen at work in a factory to determine his fitness for the work. This section was made applicable to boys under sixteen in 1912. But since the first physicians appointed under the Act died or left the service, no others have been appointed and the section is inoperative. (156)

In Nova Scotia, the Education Act has a clause, enacted in 1915, stipulating that any child of school age who applies for exemption from school attendance must obtain a certificate of physical fitness for any work he proposes to take up. This provision is seemingly not observed.

(156) Survey, Public Health Activities, Montreal, October, 1928, p.126.

Appendix II. Legislation Concerning Hours of Work.

A. Dominion Legislation

Public Works and Supplies

Since March, 1900, the Dominion government has followed the policy laid down in a resolution of the House of Commons requiring contractors for the construction of public works or for the furnishing of equipment or supplies to pay "fair" wages to those employed in such work. Proper enforcement of such a policy involved the regulation of hours as well as wages, and clauses were inserted in such contracts requiring that prevailing rates of wages should be paid and current hours of labour observed. Where no rates or hours could be properly so described, wages and hours had to be such as the Minister of Labour was satisfied were "fair and reasonable". In 1922, the application of this policy by the various government departments was standardized under an order-in-council setting out the labour conditions to be inserted in contracts for construction works and for equipment and supplies.

Statutory effect was given to the fair wage policy for public works by the Fair Wages and Eight-Hour Day Act, 1930. Working hours of persons employed directly by the government or by a contractor on such works were limited to eight a day except in special cases determined by the Governor-in-Council or in case of emergency as approved by the Minister of Labour. In 1935, the Fair Wages and Hours of Labour Act, repealing the 1930 statute from May 1, 1936, provided for a 44-hour week as well as an 8-hour day on construction work undertaken by the Government of Canada either directly or by contract unless such works are expressly excepted by the Governor-in-Council from the operation of the Act. Moreover, these conditions were made to apply to works involving a Dominion grant, whether the party

assisted be a private corporation or provincial or municipal authority, unless by statutory authority or by agreement the grant is excepted from this requirement.

An International Convention of 1936 limits the weekly hours of work on public works undertaken or subsidized by central governments to forty. This convention has not been implemented by the Government of Canada.

Seamen

There is no legislation in Canada limiting hours of work on vessels at sea or on inland waters. This field is within the competence of the Dominion government.

The draft Convention and Recommendation of the International Labour Conference of 1936 relate to hours of work and manning on board ship. Broadly speaking, the Convention provides for an 8-hour day for deck ratings, engine-room and stokehold ratings and for deck and engineering officers. When the time is divided into watches, maximum weekly hours are fifty-six. Day workers have a 48-hour week. Regulations may permit overtime under certain conditions but extra compensation must be paid.

For catering and clerical departments on vessels with a passenger certificate or a safety certificate issued in accordance with the International Convention for the Safety of Life at Sea, the Convention prescribes a minimum rest of twelve hours out of twenty-four and eight hours must be consecutive. On other vessels, the hours of work must not exceed eight, except where permitted under the regulations.

The Convention applies to all mechanically propelled vessels on voyage between one country and another. It does not apply to fishing vessels or to sailing vessels with auxiliary engines or to ships on short voyages. There is no regulation of hours for wireless operators, pilots, doctors or nurses.

The Recommendation of the Conference on the subject

of hours of seamen is to the effect that any country which has not regulated hours of work and manning at sea should investigate the conditions obtaining on vessels and take measures to prevent overwork and insufficient manning.

1. Provincial Legislation Dealing Solely with Hours of Work.

(a) British Columbia

British Columbia was the first province to enact a statute fixing a maximum number of hours without regard to the age or sex of the workers employed. In 1921, the Legislature of British Columbia passed a statute based on the Convention of the International Labour Conference of 1919 providing for an 8-hour day and a 48-hour week in industrial undertakings. It was stipulated, however, that the Act should come into operation only when other provinces had enacted similar legislation. No other province took such action and in 1923, British Columbia passed a revised statute which came into force on January 1, 1925.

Industrial undertakings under these Acts included mines, quarries and other works for the extraction of minerals from the earth, manufacturing industries, including shipbuilding and the generation and transmission of electrical or other motive power, and construction and engineering of any kind. The term does not include transportation by road, rail, sea or inland waterway and the handling of goods at docks and warehouses as provided in the Convention, and the Acts were declared not to apply to any branch of the agricultural, horticultural or dairying industry or to affect any provision of the statutes regulating employment in mines. The 1923 statute was expressly declared to cover logging operations. Like the Convention, the Acts did not apply to persons employed in positions of a supervisory, managerial or confidential nature.

The Hours of Work Act, 1923, provided for a board for its administration, and gave to the board power to exempt any

undertaking in whole or in part or for any season of the year and to make permanent exceptions in preparatory or complementary work or for seasonal or intermittent work, and temporary exceptions in case of pressure of work. Both statutes contained provisions similar to those in the International Labour Convention for exceptions from the general limitation of eight hours a day and forty-eight a week. Where by custom or agreement between employers' and workers' organizations (or, where no organizations existed, between representatives of employers and workers) the hours of work on certain days of the week were less than eight, the eight-hour limit might be exceeded on the other days but not by more than one hour, and the weekly limit of forty-eight hours could not be exceeded. Longer hours might be worked also in case of accident or urgent work to be done to machinery or plant or in case of "force majeure" but only so far as necessary to avoid serious interference with the work of the undertaking. In exceptional cases where the daily and weekly limits could not be applied, agreements between employers' and workers' representatives concerning the daily limit of work might be given the force of regulations of the board, but it was stipulated that the average number of hours per week for the period covered by the agreement might not exceed forty-eight. In continuous industries, weekly hours were limited to fifty-six. The 1923 statute as amended was revised and consolidated in 1934.

In addition to the above provisions, the Hours of Work Act, 1934, provided for its extension to other industries by giving to the Board of Industrial Relations, now in charge of it, power to declare other industries within its scope. Under this authority, there have been brought within the Act: retail and wholesale stores, barber shops, baking, catering including that in hotels, restaurants and other places where food is served, the occupations of hotel clerk and elevator operator, and

transportation other than by rail, water or air. (157)

(b) Alberta

The Hours of Work Act, 1936, of Alberta differs from the British Columbian Act in establishing different maximum hours for men and women. Male workers have a 9-hour day and a 54-hour week and female workers an 8-hour day and 48-hour week. (158) The scope of this statute is broad, applying to any establishment, work or undertaking in or about any industry, trade or occupation, except farming and domestic service. The clauses permitting exceptions to the limit placed on hours are similar to those in British Columbia but working hours in continuous industries in Alberta are to be determined by the Board of Industrial Relations after inquiry into conditions. Except where an order is made under this section, every employer must grant one day's rest in every seven to his employees. The only regulations permitting exceptions that have been made under the Act relate to working hours in connection with oil and gas wells and the transportation of passengers by motor vehicles in Edmonton.

(157) Regulations issued under this Act exempt the fruit and vegetable industry throughout the year and permit longer hours in lumbering and fish canning and for the shipping staff and persons employed in cook and bunk-houses of any industrial undertaking or in emergency repairs in shipyards, machine shops, etc., but only so long as necessary to take care of extraordinary conditions. Limited exemption is given to retail and wholesale stores for the Christmas trade and in parts of the province outside Vancouver, Victoria, Esquimalt and their environs, to drug stores, laundries, engineers, firemen and oilers in industrial undertakings, men employed in delivering products of bakeries, and to meet seasonal conditions in making wooden containers for fruit and vegetables and in lithographing if competent help is not available. In shops and laundries, the weekly limit of 48 hours may not be exceeded; in other cases the number of extra hours is stipulated.

(158) These limits are the same as those fixed for male employees in factories in Alberta under the Factories Act, 1926. Similarly, except for the limitation of daily hours to 8 instead of 9, the limits for female employees in factories, shops, hotels, restaurants, places of amusement and offices in cities, towns and villages of over 600 population, are the same as those issued under orders of the Alberta Minimum Wage Board of 1925.

(c) Quebec

The first orders of 1933 under the Act respecting the Limiting of Working Hours, fixed a maximum 40-hour week for building trades, or a 36-hour week for two shifts during the summer months. These were changed in 1936. For purposes of factory inspection, the orders relate to three areas into which the Province is divided, namely, the Montreal Division, Quebec Division and Eastern Townships Division, and for persons working in beauty parlors and shoe repair shops on the Island of Montreal. Maximum hours in shoe repairing are fixed at 64 and in beauty parlors at 55 a week. In the building trades, maximum hours under orders-in-council in force at the present time are fixed at 8 a day and 48 a week in the Quebec and Eastern Townships Divisions except on small jobs, and at 8 a day and, except in St. Hyacinthe, at 44 a week for skilled workers or 48 a week for labourers in the Montreal Division. In all divisions a two-shift system may be used and from May 1 to October 1 such a system is compulsory on works costing more than \$20,000 undertaken for a municipal or school corporation, fabrique or parish trustees or for the provincial government or on works, half the cost of which is borne or guaranteed by the provincial government or a municipal corporation. The orders do not apply to construction other than the construction, repair and demolition of buildings.

II. Provincial Legislation Dealing with Hours of Work as a Part of Working Conditions and in Relation to Specified Industries.

Note: Unless otherwise indicated, the Hours of Work Acts of Alberta and British Columbia apply to the following categories.

(a) Public Works

Saskatchewan - As a general rule, a 48-hour week is required in all government contracts for the construction of larger public works.

Manitoba - Under the Manitoba Fair Wage Act of 1916, the Minister of Public Works is authorized to establish maximum hours for persons employed on all works of construction contracted for by the provincial government. The maximum hours fixed by the regulations vary, with the occupation, from 44 to 48 per week, except for teamsters who have a maximum working week of 54 hours.

Ontario - The Government Contracts Hours and Wages Act, 1936, which came into force on January 1, 1937, places the same limits on the hours of labour on public works and on works subsidized by the provincial government as the Dominion Fair Wages and Hours of Labour Act, 1935, namely, eight a day and forty-four a week. The government may make exceptions in special cases and in emergencies.

Quebec - By an Order-in-Council of April 24, 1929, as amended on October 6, 1932, the Minister of Public Works and Labour may determine "fair and reasonable" hours of labour on construction works for the Government of Quebec and require the observance of the clause in the contract fixing such hours of work. The orders-in-council fixing maximum hours for the building industry under the Act respecting the Limiting of Working Hours, 1933, apply to such public works as the construction, repair or demolition of public buildings. The limitations on working hours under this authority have already been indicated.⁽¹⁵⁹⁾

Alberta - An 8-hour day and a 44-hour week for building construction and an 8 hour day and a 48-hour week for road construction is the "recognized practice".

Yukon Territory - An ordinance of the Yukon Territory establishes an 8-hour day for persons employed on public works except in case of "extraordinary emergency".

(159) See page 22.

Other Provinces - Other provinces have, at one time or another, adopted by resolution of the legislature or by order-in-council a "fair wage" policy in connection with public works. There is no information as to how far this policy affects hours of labour.

International Convention

An International Convention of 1936 established a forty-hour week for public works.

(b) Construction

Outside of the Hours of Work Acts of Alberta and British Columbia, there is no provincial legislation directly limiting the hours of labour of persons employed on construction, except where such work is undertaken on behalf of the provincial government.

In Quebec, as pointed out above, the building trades in certain parts of the province have an 8-hour day and 44 or 48-hour week by regulation under the Limitation of Hours Act, 1933. In Nova Scotia, under a similar Act, the government has power to limit hours on construction works as in other industrial undertakings, but no orders have been made.

There are legal limits placed on the working hours of persons employed in the building trades under the Industrial Standards Acts of Ontario, Alberta, Nova Scotia and Saskatchewan but these orders are limited in scope and do not apply to the industry as a whole. Similarly, there is a legal limit placed on the working hours of persons employed in construction in certain parts of Quebec by orders-in-council making binding certain provisions of collective agreements under the Workmen's Wages Act, 1937, replacing the Collective Labour Agreements Extension Act, 1934, and amendments.

International Convention

In order to give effect in Canada to the International

Labour Convention concerning the eight-hour day in industrial undertakings, it would seem necessary to enact a law restricting hours of labour on works of construction to 8 in a day and 48 in a week in all provinces but British Columbia. The limitation of working hours under such Acts as those referred to, even when the standards established are as high or higher than those laid down in the International Labour Convention, do not appear to fulfil the requirements of the Convention. The orders-in-council regulating hours are restricted in scope geographically and in most cases industrially. Moreover, they remain in force during the pleasure of the government or for not more than a year or are dependent on agreements between employers and workers. They lack the general scope and permanence of a statute fixing maximum hours of labour. The standards established in the International Labour Convention are intended to be minimum standards given effect to by legislation. Above this national minimum, collective agreements may play their part in establishing higher standards.

(c) Mines

There is no mining in Prince Edward Island. Coal mining is carried on in Alberta, British Columbia, New Brunswick, Nova Scotia, and Saskatchewan; mining for metals and non-metallic minerals in these provinces and in Manitoba, Ontario and Quebec, and the Yukon Territory.

Table 4, Chapter 2, shows the hours of work, province by province, for work in and about metal mines and coal mines.

Metal Mines

In 1899, British Columbia became the first province to give a 8-hour day to underground workers in metal mines. This example, however, has chiefly been followed in legislation regulating coal mines. In Ontario, the eight-hour day for metal

miners underground, which was first enacted in 1913, applies only to those portions of the province without county organization, that is to Northern Ontario. The Act stipulates that this provision may be applied to other parts of the province on proclamation of the Lieutenant-Governor-in-Council. No proclamation to this effect has been issued. While the most extensive mining operations are in Northern Ontario, mining is also carried on in several counties.

In Quebec, there is no limitation on the hours worked below ground except for boys under 18. The latter may not be so employed for more than 48 hours in a week.

In Manitoba, the Mines Act of 1927 gave to the Lieutenant-Governor-in-Council power to regulate working hours in mines but no such regulations have been made.

In New Brunswick, hours below ground in metal mines are restricted to eight in twenty-four.

In Nova Scotia, the Metalliferous Mines Act, 1937, does not limit hours.

Only in British Columbia and Alberta, is there legislation limiting the hours of labour of persons working above ground about metal mines. In these two provinces there is no distinction between workers above or below ground in metal mines or quarries.

Coal Mines

There is a statutory eight-hour day for underground work in coal mines in all provinces where coal is mined, but in Saskatchewan longer hours may be worked on agreement between employer and workman. Above ground, however, there is markedly less uniformity. There is an eight-hour day in both British Columbia and Saskatchewan under the statutes applying to coal mines but in Saskatchewan an agreement may be made for longer hours. In Alberta, the Coal Mines Regulation Act does not

restrict working hours above ground but under the Hours of Work Act, 1936, male workers employed about any mines or quarries have a maximum nine-hour day and 54-hour week. In New Brunswick and Nova Scotia, the laws applying to coal mines do not fix maximum hours for persons employed above ground.

In all the statutes limiting the hours of labour of miners, provision is made for exceptions in case of accident and emergencies, for longer hours for maintenance men, and when necessary for a change of shifts when more than two shifts are worked.

International Convention.

The Convention of the International Labour Conference of 1919 providing for an eight hour day and forty-eight hour week in industrial undertakings covers mines and quarries but a Convention applying particularly to hours of work underground in coal mines was adopted in 1931 and revised in some points in 1935. The latter Convention limits hours of labour underground (160) in hard coal and lignite mines to seven hours and forty-five minutes per day. The time spent in going from the surface to the working place and in returning to the surface is to be included in this period. Provision is made for calculating the period from the time when the first workers of a shift leave the surface to the time when they return to it.

No underground work may be done on Sundays or on legal public holidays unless the worker has a rest period of at least

(160) "Lignite" mine in the Convention means any mine from which coal of a geological period subsequent to the carboniferous period is extracted. Practically all coal in Canada except that of Nova Scotia and New Brunswick is lignite according to this definition.

(161)

24 hours, 18 of which fall on Sunday or on the legal holiday. If work-places are particularly unhealthy by reason of the temperature, humidity or other cause, lower maximum hours must be fixed by the law implementing the Convention.

None of the provincial laws relating to coal mining appears to fulfil the conditions laid down in the Convention. The lowest maximum fixed by provincial law is eight hours from the time the worker leaves the surface until he returns to it. In New Brunswick, Nova Scotia and Saskatchewan, the limitation placed on hours of work of coal miners relates to the time spent at the working place underground. Only in Alberta and British Columbia does the eight-hour limit include the time taken to go to and from the working place.

As to mines other than coal mines, the provision in British Columbia for an eight-hour day in the Metalliferous Mines Act and a forty-eight hour week under the Hours of Work Act would appear to make effective in this industry the principal provisions of the Convention on hours of labour in industrial undertakings. In none of the other provinces does the law meet the requirements as far as metal mining is concerned.

(d) Factories

The Hours of Work Acts of British Columbia and Alberta apply to manufacturing establishments. In the other provinces, except Prince Edward Island which has no factory legislation,

(161) Details of this Convention regarding overtime are as follows: Overtime is allowed for persons over 18 years of age in work which, by its nature, is necessarily continuous, in work connected with ventilation, safety, first-aid or in caring for animals, in surveys or in urgent work with machinery which cannot be done during the regular working time without interrupting the work of the undertaking. For Sundays, holidays and overtime work, payment must be made at the rate of time and quarter and if overtime work is considerable, a compensatory rest period must be given or a further extra payment. Regulations may give to all hard coal undertakings in the country not more than 60 hours overtime in a year and to lignite undertakings a maximum of 75 hours in the year. Collective agreements may be approved providing for a further maximum of 75 hours in a year in special cases arising from technical or geological conditions.

The hours fixed by this Convention do not apply to open hard coal and lignite mines but it is stipulated that the hours fixed by the Convention covering industrial undertakings shall apply to open mines.

the factory laws regulate the working hours of women and young persons only. Except in Nova Scotia, all these factory laws limit the weekly hours of work of women and young persons and in all but Nova Scotia and Saskatchewan, daily hours are also restricted. In all the statutes, except that of Alberta and Ontario, the word "week" is defined as the period from Sunday night to Saturday night. Table 4, Chapter 2, summarizes provincial legislation concerning hours of work in factories.

Nova Scotia

The present Factories Act does not restrict hours of labour. The first Factories Act of 1901 placed a maximum of ten hours a day and sixty hours a week on the working time of women and young persons under fourteen, but gave the factory inspector power to permit longer hours in case accident to the motive power prevented the working of the factory, or where any occurrence beyond the control of the employer interrupted the working of the machinery, or "where the customs or exigencies of certain trades require" longer hours. In such emergencies, working hours could not exceed $12\frac{1}{2}$ a day and $72\frac{1}{2}$ a week, and such longer hours could not be worked on more than 36 days in the year. These provisions regarding hours were the same as those established in the factory laws of Ontario and Quebec in 1884 and 1885. Through various changes made in the Nova Scotia statute, the only clause relating to working hours now found in it is the provision for cases of emergency. There is no reference to a ten-hour day or sixty-hour week.

New Brunswick

The limitations in force are a ten hour day and sixty-hour week for girls and women. In cases of emergency (as defined in the Act of Nova Scotia) the factory inspector may permit working hours of $13\frac{1}{2}$ a day and 81 a week. These longer hours may not be worked on more than 36 days in a year.

These limitations are changed substantially by the New Brunswick Factories Act of 1937, which is to come into effect on proclamation. It reduces the maximum hours per week to fifty and brings boys under 18 within the scope of the Act. Exemption from these limits may be granted by a factory inspector for the same reasons as under the old Act but the new statute fixes a maximum in such cases of twelve hours a day and sixty-eight a week on not more than thirty-six days in a year.

Quebec

The first factory act placed the same restrictions on the working hours of women and young persons as in Ontario, but in 1930 the Industrial Establishments Act was amended to limit the weekly hours of women and young persons under normal conditions to fifty-five. In 1934, it was stipulated that when longer hours were worked with the factory inspector's permission they should not exceed sixty-five a week. In Quebec, as will be the case in New Brunswick when the Act of 1937 is proclaimed, boys under 18 are limited to the hours specified. In 1935, women and boys under eighteen were permitted to be employed on a two shift system provided the shifts were not more than eight hours each and both fell between 6 a.m. and 11 p.m.

Ontario

The limitations first enacted remain in force, a ten-hour day and sixty-hour week for girls and women and for boys under 16. The usual definition of a "week" as the period from Sunday night to Saturday night was dropped when the Ontario Factory, Shop and Office Building Act was revised in 1932. In cases of emergency (as defined in the Act of Nova Scotia) the factory inspector may permit hours of $12\frac{1}{2}$ a day and $72\frac{1}{2}$ a week, but these longer hours may not be worked on more than 36 days in a year. In 1932, the two shift system was provided for as indicated above for Quebec, but the classes provided for are females and boys under sixteen.

Appendix

The following table shows the results of the experiments conducted on the 15th and 16th of May 1901. The first column gives the number of the experiment, the second column the time taken for the reaction to take place, and the third column the amount of gas evolved.

Experiment No. 1. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 1.2 c.c.

Experiment No. 2. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 1.5 c.c.

Experiment No. 3. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 1.8 c.c.

Experiment No. 4. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 2.1 c.c.

Experiment No. 5. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 2.4 c.c.

Experiment No. 6. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 2.7 c.c.

Experiment No. 7. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 3.0 c.c.

Experiment No. 8. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 3.3 c.c.

Experiment No. 9. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 3.6 c.c.

Experiment No. 10. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 3.9 c.c.

Experiment No. 11. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 4.2 c.c.

Experiment No. 12. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 4.5 c.c.

Experiment No. 13. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 4.8 c.c.

Experiment No. 14. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 5.1 c.c.

Experiment No. 15. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 5.4 c.c.

Experiment No. 16. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 5.7 c.c.

Experiment No. 17. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 6.0 c.c.

Experiment No. 18. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 6.3 c.c.

Experiment No. 19. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 6.6 c.c.

Experiment No. 20. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 6.9 c.c.

Experiment No. 21. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 7.2 c.c.

Experiment No. 22. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 7.5 c.c.

Experiment No. 23. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 7.8 c.c.

Experiment No. 24. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 8.1 c.c.

Experiment No. 25. Time taken for reaction to take place, 15 minutes. Amount of gas evolved, 8.4 c.c.

Manitoba

Under the Factory Act, no girl or woman may be employed for more than nine hours a day or fifty-four a week unless the factory inspector permits longer hours, in which case the maximum daily hours are 12 and the weekly hours 60 for not more than 36 days a year. Orders of the Manitoba Minimum Wage Board, however, have placed further restrictions on the hours of labour of female factory workers in Manitoba since 1921. At the present time, under an order of the Minimum Wage Board, females and boys under 18 years of age in factories have a maximum nine-hour day and forty-eight hour week except when permitted by the provincial Bureau of Labour to work not more than twelve hours a day and sixty a week. Such overtime work is prohibited, however, for any person under seventeen years of age.

Saskatchewan

The factory law does not limit the hours of labour that may be worked in a day but provides that the working hours of boys under sixteen and of all girls and women may not exceed forty-eight a week, except with a permit from the factory inspector on the same grounds as are stipulated in the factory law of the other provinces. In such cases, work may continue, as in Ontario, for not more than $12\frac{1}{2}$ hours a day and $72\frac{1}{2}$ a week on a maximum of thirty-six days in the year.

Indirect limiting of hours by Minimum Wage Boards and by other legislation (162).

The Minimum Wage Boards in most provinces indirectly restrict hours by requiring that the time worked beyond a specified number of hours per day must be paid for, usually at a higher hourly rate. Hours in some manufacturing industries are also limited under the Quebec Workmen's Wages Act and the Industrial Standards Acts of Ontario and Alberta by orders-in-council making binding the terms agreed upon by representatives of employers and employees in those industries.

International Convention

Factories fall within the scope of the International Labour Convention of 1919 limiting the hours of work of industrial undertakings to eight in the day and forty-eight in the week for all workers. British Columbia is the only province whose legislation meets the requirements of this Convention. Most of the provincial legislation does not include men at all and in some cases does not cover boys.

(162) See Chapters 3 and 4.

(e) Shops and Commercial Establishments.

Table 4, Chapter 2, summarizes provincial legislation concerning hours of work in shops and commercial establishments.

Prince Edward Island, New Brunswick
and Nova Scotia.

There is no statutory limitation on the working hours of persons employed in retail or wholesale stores in Prince Edward Island and New Brunswick or for adults in Nova Scotia. The Children's Protection Act of Nova Scotia stipulates that no boy under 14 or girl under 16 may be employed in a shop for more than eight hours in a day or for more than four hours on Saturday.

Quebec.

Maximum hours are fixed for female workers and boys under eighteen and are higher for shops than for industrial establishments. A sixty-hour week is allowed as contrasted with a fifty-five hour week for industrial establishments. The restriction on hours in shops applies only to cities and towns with a population of 10,000 or over and an exception is made during the two weeks preceding New Year's day. Moreover, the inspector may permit longer hours for a period of not more than six weeks up to twelve hours a day and sixty-five a week. No female worker or boy under 18 may be employed in a shop in cities or towns of more than 10,000 before 7 A.M. or after 11 P.M.

Ontario.

The same hours apply to commercial as to industrial establishments, ten hours a day and sixty hours a week for female persons and boys under sixteen. Working hours in restaurants are similarly limited. Working hours must fall between the hours of 7 A.M. and 11 P.M. unless a special permit is obtained from the Inspector.

Manitoba.

The Shops Regulation Act restricts the hours of children under fourteen, who are exempt from school attendance, to eight in a day and forty-eight in a week. Under a minimum wage order applying to retail and wholesale stores, establishing a basic 48-hour week for both male and female workers of all ages, time worked in excess of forty-eight hours a week, or on any day except Saturday in excess of nine hours, or on Saturday in excess of ten and one-half hours, must be regarded as overtime and paid for at a minimum rate five cents higher than the minimum wage established for regular working hours. No person under eighteen may work overtime and no female employee may work overtime on more than thirty-six days in the year. (163)

Saskatchewan.

There is no general statutory provision regarding hours of work in shops. Such hours are affected indirectly by the Minimum Wage Board by requiring a forty-eight hour week for the minimum wage and extra payment for overtime.

Alberta and British Columbia.

In Alberta and British Columbia retail and wholesale stores come within the scope of the Hours of Work Acts, but in British Columbia special regulations have been made covering such stores. In all parts of the province, except Vancouver, Victoria, Esquimalt and their environs, the daily limit of eight hours may be exceeded by three hours on Saturday or on the day before a statutory holiday if the holiday falls on Saturday, but no exception is made to the 48-hour week.

(163) Such overtime should not exceed three hours a day or six a week unless a permit has been obtained from the Provincial Bureau of Labour but during the period from December 15-24 inclusive, nine hours' overtime a week may be worked by female employees. No overtime in excess of six hours a week may be worked by any male person of 18 years of age and over unless a permit has been obtained from the Provincial Bureau of Labour, except during December when nine hours extra time may be worked.

Temporary exemption is made for the Christmas shopping season but the weekly hours may not exceed forty-eight nor the daily hours ten. In drug stores, four additional hours a week may be worked, and in florists' shops a maximum of nine hours a day and ninety-six a fortnight is fixed.

International Convention.

A Convention adopted by the International Labour Conference in 1930 limits the hours of work in commerce and offices to forty-eight in the week and eight in the day. There is some flexibility in the limit on daily hours, provided that not more than ten hours shall be worked on any one day. Exceptional cases are to be taken care of by regulations which may permit hours to be distributed over a period longer than the week provided that the average hours per week for the number of weeks specified do not exceed forty-eight and that the daily hours do not exceed ten. It is stipulated that special regulations may be made for shops and other establishments where the nature of the work, the size of the population and the number of persons employed make the standards established by the convention inapplicable. Temporary exceptions may also be made by regulation in case of accidents or urgent work or in connection with perishable goods or for such special work as stock-taking, balancing of accounts, etc., and any abnormal pressure of work due to special circumstances. It is stipulated that all overtime must be paid for at one and a quarter times the regular rate.

The Convention applies to commercial establishments of various kinds as well as to retail and wholesale stores, including commercial or trading establishments, postal, telegraph and telephone services, offices of all kinds and mixed commercial and industrial establishments unless they are deemed to be industrial establishments. In other words, this convention applies to all establishments of a commercial nature to

which the convention relating to industrial undertakings does not apply, except for specified institutions and businesses such as hotels, restaurants, institutions for the care of the sick, etc., theatres and other places of amusement.

The legislation of British Columbia appears to comply with the provisions of this Convention except for the payment of overtime work. In Alberta the maximum hours fixed by the Hours of Work Act for female employees meet the conditions of the Convention, but the working hours permitted male employees in shops and commercial establishments are longer than those of the Convention. The legislation of the other provinces is far removed from the requirements of the Convention.

(f) Bake-Shops.

In some provinces there is special legislation limiting hours that may be worked in bake-shops. Large bakeries not selling at retail on the premises would in all the provinces be within the scope of the Factories Act.

Alberta and British Columbia.

Bake-shops and bakeries come within the Hours of Work Acts. A regulation under the British Columbia statute exempts men employed in the delivery of bakery products from the weekly maximum of forty-eight hours and permits them to work six additional hours.

Manitoba.

The Bake-Shop Act, which applies to any place where bread, biscuits, cake or confectionery is made or sold, restricts hours of labour of all employees to twelve a day and sixty a week.

Ontario.

The term "bake-shop" is defined as a place of manufacture and not of sale but places where bakery products are offered for sale would come within the definition of the word "shop". An amendment to the Factory, Shop and Office Building

Act, 1934, establishes a maximum of fifty-six hours for adult male employees in bake-shops and allows overtime only with the permission of the factory inspector except on Friday of any week where a statutory or civic holiday occurs on the following Monday. In the latter case, a permit for overtime is not required. No adult male employee may work in a bake-shop on Sunday between 7 A.M. and 1 P.M., except in connection with such preliminary work as the kindling of fires, the fermentation process or preparation of doughs and sponges, but this restriction on Sunday work applies only to employees whose daily employment exceeds eight hours between 7 A.M. and 6 P.M. and who have not a weekly rest-day. The Act stipulates that all employees who work more than nine hours during any one work-period or during any twenty-four consecutive hours, except in cases covered by special permit, must have twenty-four hours consecutive rest before beginning the next daily work-period. In places where bakery products are sold at retail or in large bakeries classed as factories, the working hours of boys under 16 and of girls and women are limited to ten a day and sixty a week with provision for exemption on not more than thirty-six days in the year up to $12\frac{1}{2}$ a day and $72\frac{1}{2}$ a week.

Quebec.

Hours in bake-shops would in most cases be limited in the same way as hours in retail stores or in factories. Under the Collective Labour Agreements Act, however, hours are limited for persons employed in the baking industries in the five largest cities and in Sorel.

Nova Scotia, New Brunswick and
Prince Edward Island.

There is no regulation of the hours of work in bake-shops in these provinces. But here, as in all provinces, municipal by-laws may fix the hours during which retail shops may be open to the public and thus impose some limitation on hours of employment.

International Convention.

Bake-shops would come under either the Convention regulating industrial undertakings or the Convention regulating commerce and offices, depending upon whether the manufacturing or retail end were stressed. Both Conventions stipulate an eight-hour day and a forty-eight hour week. Only British Columbia meets these requirements, except for men employed in the delivery of bakery products.

Convention No.20, 1925, prohibits the making of "bread, pastry or other flour confectionery during the night". The term "night" signifies a period of at least seven consecutive hours which shall include the period between eleven o'clock in the evening and five o'clock in the morning. None of the Canadian provinces has legislation implementing this Convention.

(g) Barber Shops and Beauty Parlours.

These businesses fall within the scope of Convention No.30, limiting the hours of work in commerce and offices to eight a day and forty-eight a week. The same wide variations exist in provincial legislation here as in the fields already covered. Briefly, the provincial legislation may be summarized as follows:

In Nova Scotia, New Brunswick and Prince Edward Island, there is no statutory limitation of the hours of labour in barber shops and beauty parlours but, as in other provinces, municipal by-laws may affect them.

In Alberta such establishments are covered by the Hours of Work Act.

In British Columbia barber shops are within the Hours of Work Act but since 1935 there has been no regulation of the hours of work in beauty parlours.

In Manitoba and Saskatchewan working hours in beauty parlours are limited by Minimum Wage Orders. In Manitoba no female or boy under eighteen may be employed for more than 10 hours in a day or 48 in a week, unless with permission from the factory inspector, when overtime up to 13 hours a day and 54 a week may be worked on not more than 20 days in a year. In Saskatchewan a Minimum Wage Order of 1936 applying to both male and female employees fixed a maximum working week of 57 hours, but a new order in effect on January 10, 1938, places no restriction on working hours.

In Ontario the word "shop" in the Factory, Shop and Office Building Act is defined to include places "where services are offered for sale" and appears to cover barber shops and beauty parlours. Under this Act working hours of boys under 16 and of all girls and women are limited to 10 a day and 60 a week, hours to fall between 7 A.M. and 11 P.M., unless a special permit is given.

In Quebec a regulation applying only to the Island of Montreal and issued under the Act respecting the Limiting of Hours prohibits any person being employed in beauty parlours for more than 55 hours in a week. On the first five days of the week the work-period must be between 9 A.M. and 7 P.M. On Saturday it may be extended until 8 P.M.

In certain cities of Saskatchewan, however, as in some districts in Ontario and Quebec, wages and hours of labour in barber shops are regulated under the Industrial Standards Act of the first two provinces and under the Collective Labour Agreements Act of Quebec.

(h) Hotels and Restaurants

"Hotels, restaurants and similar establishments" were specifically excepted from the draft convention limiting the hours of work in commerce and offices, but they were made the subject of a Recommendation (No.37) in 1930. With an eye

to the possibility of extending the provisions of the Convention to these classes of establishments, the Conference recommended to its members that they "make special investigations into the conditions obtaining in these establishments, in the light of the rules laid down in the above mentioned Draft Convention", and report full information as to the results of the investigations to the International Labour Office. To date, no further action has been taken. (164)

New Brunswick, Nova Scotia, Prince
Edward Island and Saskatchewan.

In these provinces, hours of labour in hotels and restaurants are not restricted by statute or regulation. In Saskatchewan the hours of labour of girls and women were limited by a Minimum Wage Order but with the extension of the Order to male employees, this restriction was dropped.

Alberta and British Columbia.

The Hours of Work Acts apply to these establishments. Regarding hotels in British Columbia, persons employed in connection with the preparation and serving of meals and as telephone or elevator operators, room clerks or in clerical work of any kind are covered by the Hours of Work Act, but by an Order of February 14, 1938 under the Female Minimum Wage Act all females employed in the hotel and catering business have an 8 hour day and a 48 hour week, with exemptions up to 10 hours in a day and 50 in a week in emergencies, the overtime to be paid at the rate of time and a half.

Manitoba.

Under an order of the Minimum Wage Board, the hours of work of males and females employed in restaurants, and of girls and boys under 18 in hotels are limited to 10 a day and 48 a week with one day's rest a week or two half-days of not

less than five hours each. This limitation does not apply to (164) Similar Recommendations were adopted the same year "concerning the regulation of hours of work in theatres and other places of public amusement" (No.38) and "concerning the regulation of hours of work in establishments for the treatment or the care of the sick, infirm, destitute or mentally unfit" (No.39). No further action has been taken regarding either of these Recommendations.

persons employed as cooks, but the latter and males over 18 working in hotels must be paid an hourly rate for all hours worked in excess of forty-eight a week. In hotels of one hundred rooms or more, the total number of hours worked by these employees must not exceed fifty-four a week.

Ontario.

Female employees and boys under sixteen are limited to ten hours a day between 7 A.M. and 11 P.M. and sixty hours a week in restaurants. There is no regulation of working hours in hotels in Ontario.

Quebec.

A regulation under the One Day's Rest in Seven Act stipulates that persons working in hotels and restaurants should not do more than twelve consecutive hours work in twenty-four.

One Day's Rest in Seven.

Statutes requiring that employees be given one day's rest in seven apply to hotels and restaurants in cities in Manitoba, Ontario and Saskatchewan. In Quebec an order-in-council under a somewhat similar Act provides for a weekly rest for employees in hotels, restaurants and clubs, except those employing less than five persons in towns with less than 3,000 inhabitants. In some cases, two 18-hour or two 12-hour periods may be substituted for the 24-hour period.

(i) Offices.

In the international field, offices are covered by Convention No.30, limiting the hours of work in commerce and offices to forty-eight in the week and eight in the day. No province in Canada has legislation implementing this Convention in full. Table 4, Chapter 2, summarizes the provincial legislation.

In Alberta the hours of office employees are governed by the Hours of Work Act, that is, maximum hours for females are eight a day and forty-eight a week, and for males nine a

day and fifty-four a week.

In British Columbia office workers employed in the industries covered by the Hours of Work Act appear to come within its provisions and they would therefore have the hours specified by the Convention. An order under the Female Minimum Wage Act limits hours of female office workers to eight a day and forty-eight a week unless a permit for longer hours is obtained.

In Manitoba an order of the Minimum Wage Board fixed the maximum number of hours for female office workers in Winnipeg, St. Boniface and St. James at eight a day and forty-four a week, with one half-holiday each week. In shops, however, working hours for the office staff are the same as for the selling force. No female employee may work between 7 P.M. and 7 A.M. or on Sunday.

(j) Transportation.

Steam Railways.

Ontario is the only province in which there is a statutory regulation of the hours of work for the employees of steam railways. The Ontario Railway Act stipulates that no company operating a line of railway of twenty miles in length or over shall permit a conductor, engineer, motorman, fireman, dispatcher or signal man, who has worked in any capacity for sixteen consecutive hours, to go on duty again without at least six hours' rest.

Electric and Street Railways.

The British Columbia Railway Act enables the Lieutenant-Governor-in-Council to limit the number of days in a week on which employees of street railways may be permitted to work. No regulations have been made under this authority.

The Ontario Municipal Board, under the Railway Act, may regulate the hours during which conductors, motormen and employees of a street railway company may work but in no case

may any employee of a street or electric railway company work more than six days of ten hours each. No employee may be required to work two Sundays in succession, and, whenever practicable and reasonable, the ten hours worked by street railway employees must fall within twelve consecutive hours.

In Nova Scotia an "Act of Street Railway Companies", applying only to the City of Halifax, limits the number of hours of work of motor-men and conductors to six on Sunday and ten on week days but stipulates that these provisions shall come into force only on order of the Board of Public Utilities. No order of this kind has been made.

Transportation by Road.

Table 4, Chapter 2, summarizes provincial legislation concerning hours of work for transportation by road.

British Columbia

All means of transportation of goods other than by rail, water or air were brought under the Hours of Work Act in June, 1935. Persons employed in such work have an eight-hour day and forty-eight hour week with provision, by regulation, for overtime of six hours a week; but the daily hours may not exceed ten. Foot messengers, bicycle riders and motor cyclists employed exclusively in the delivery of goods or in messenger work and drivers of vehicles employed in the retail delivery of milk are exempt from this limitation, but persons delivering milk may not work more than ten hours a day or more than sixty-three a week and the average hours per week over a period of seven weeks may not exceed fifty-four.

Alberta.

Transportation by road is covered by the Hours of Work Act. No regulations have yet been drawn up making special provision for motor transport. An Order-in-Council under the Public Service Vehicles Act stipulated that no driver of a public service vehicle or a commercial vehicle could work as a driver for more than nine hours in any twenty-four consecutive

hours except in case of emergency. Under special circumstances over a specified route, the Highway Traffic Board may allow a maximum of ten hours in two periods of five hours each separated by a rest period of not less than forty-five minutes but such an exception was to be permitted only in accordance with the Hours of Work Act. This Order-in-Council has been suspended since the enactment of the Hours of Work Act, 1936, until March, 1938, with respect to all but passenger vehicles. The regulations apply therefore only to passenger vehicles. In the city of Edmonton an agreement between employers and the operators of public service vehicles (Passenger vehicles), made binding until July 9, 1938, under the Industrial Standards Act, was given the force of a regulation under the Hours of Work Act by Order-in-Council of September 7, 1937. Maximum hours for drivers are twelve a day from the posted time of starting on six days a week with a rest period of one hour each day.

Saskatchewan.

Under the Public Service Vehicles Act, the Public Utility Board may regulate hours of work for drivers of public service and commercial vehicles not including vehicles carrying passengers for an electric or steam railway.

Manitoba.

Orders issued under the Highway Act limit the number of hours of actual driving of passenger vehicles to nine in any twenty-four, the hours of work in any capacity to twelve in any twenty-four, and the number of days to not more than six in any week. In Greater Winnipeg, a special statute fixes maximum hours for taxicab drivers at twelve a day on not more than six days in a week. By regulation, the twelve hours must be counted from the time the driver first reports for work until he finally leaves. The Act enables the Taxicab Board to establish lower maximum hours.

Ontario.

By statute, the hours of drivers of passenger vehicles for commercial use are limited to ten in any 24-hour period. Regulations under the Ontario Commercial Vehicle Act prohibit truck drivers working in any capacity for more than ten hours out of twenty-four.

Quebec.

The only provision in Quebec is a stipulated maximum of 250 miles of driving for autobus drivers in any 24-hour period.

Nova Scotia.

Under an amendment to the Vehicle Act, in 1936, the Minister of Highways, with the approval of the Lieutenant-Governor-in-Council, may limit the hours of labour of operators of commercial motor vehicles. So far no orders have been issued.

New Brunswick.

Regulations under the Motor Carriers Act limit the hours spent in driving trucks and passenger vehicles for commercial use to ten in any sixteen consecutive hours, except in case of emergency.

Prince Edward Island.

The maximum hours that may be spent in driving trucks or passenger vehicles for commercial use are ten in any twenty-four hour period.

International Convention.

All forms of the transportation of passengers and goods by road and rail are within the scope of the International Labour Convention providing for an 8-hour day and 48-hour week, with some exceptions. In British Columbia the regulations applying to transportation by road appear to conform to the Convention. The legislation of the remaining provinces varies substantially and none of it implements the international legislation.

APPENDIX III. MINIMUM WAGE LEGISLATION IN CANADA.

Administrative Bodies:

None of the minimum wage laws fixes a flat rate of wages. Each statute provides for an administrative body to inquire into conditions and determine the minimum wage for any class of workers within its scope.

In Alberta and British Columbia, a Board of Industrial Relations is charged with carrying out the Hours of Work Act as well as the two minimum wage laws. The British Columbia Board was established under the Male Minimum Wage Act of 1934, which provides that the Board shall consist of five members of whom the Deputy Minister of Labour shall be one and he is to be chairman. One member of the Board must be a woman. The Alberta Board of Industrial Relations, appointed under the Hours of Work Act, 1936, must have not more than five members. A Board of three was set up on November 5, 1936.

In Ontario, the Industry and Labour Board, provided for by an amendment in the Department of Labour Act in 1937, administers the revised Minimum Wage Act, 1937. The Board consisted of five members appointed by the Lieutenant-Governor in Council but an amendment of 1938 stipulates that the Board shall have three members all of whom are to be officers of the Department of Labour.

In New Brunswick and Quebec, there is a Fair Wage Board. The New Brunswick Board consists of five persons, two representing employees and two representing employers with a "disinterested" chairman. The Quebec Fair Wage Board, described in the Act of 1937 as "an arbitration tribunal", is required to have not more than five members. The Board constitutes a corporation and possesses the rights and duties of such a body.

In Manitoba, Nova Scotia and Saskatchewan, the Minimum Wage Board is required to be constituted as it was under the first minimum wage laws. In Manitoba employers and employees

must be represented on the Board by two members each. One employees' representative must be a woman and the chairman "disinterested". In Nova Scotia and Saskatchewan, two women must be members of the Board of five members.

(165)

Scope of Laws:

The Minimum Wage Acts in all the provinces but New Brunswick have been amended to broaden their application, in some cases geographically, in others industrially, and all but that of Nova Scotia to provide for the establishment of minimum rates of wages for male workers.

(1) Application to Male Workers:

Both Canadian and American minimum wage legislation restricted its coverage to women and girls although in some cases, partly as a further safeguard to the wage standards of female workers, boys under twenty-one were included.

In Canada, however, the first legal minimum wage was established by the Alberta Factories Act, 1917, and it included both men and women. It stipulated that no person should be employed in any factory, shop or office at a lower wage than \$1.50 per shift except apprentices who might be paid a minimum of \$1.00 a shift. The enactment in 1920 of a minimum wage law applying only to women led to the restriction of this clause of the Factories Act to persons to whom the Minimum Wage Act did not apply. In the revised Factories Act, 1926, the clause was replaced by a section stipulating that wherever a minimum wage had been fixed for female employees, no male worker, except an indentured apprentice, should be employed in the same class of employment at a lower wage. Finally, on the enactment of the Alberta Male Minimum Wage Act in 1936, the section was repealed.

(165) References to the existing legislation are listed on page 47.

In the meantime, British Columbia had enacted a Male Minimum Wage Act in 1925 and in other provinces the first steps had been taken to extend the existing Minimum Wage Act to males by amendments designed to prevent the evasion of minimum wage standards by the employment of males at lower rates, a practice fairly common in all provinces during the depression.

In 1931, the Manitoba Act was amended to include boys under 18. In 1933 it was forbidden to pay any person over 18 years of age at a lower rate than that fixed for boys under 18. In the next year, the Manitoba statute was again amended to apply to male workers in the same way as to female employees. In the same year in Saskatchewan, the Lieutenant-Governor in Council was given power to extend the Act to male workers on the recommendation of the Minimum Wage Board but no orders for male workers were made until 1936.

The Acts of Ontario and Quebec were amended in 1934 to apply to male employees but only in so far as was considered necessary to protect female workers. In Ontario the employment of men to replace women at lower rates was prohibited; and in Quebec it was forbidden to employ men in occupations where a minimum rate had been set for women at a lower rate than the minimum. In 1937 new laws were enacted in those two provinces applying both to men and women. The Minimum Wage Act of Ontario is a revision and consolidation of the old Act. The Fair Wage Act of Quebec contains several provisions not included in the Ontario statute and provided for conciliation in disputes regarding wages and hours.

The Fair Wage Board of Quebec issued a general order fixing minimum wages for both men and women, on April 27, 1938. This order replaced an order issued on December 31, 1937.

(166)

Those affected are divided into six categories: employees in

(166) In the first category, workers are further divided on the basis of experience, into three classes having descending rates of pay, but it is provided that class A must include not less than 60%, class B, not more than 25%, and class C not more than 15% of the total number of employees of the same employer.

industrial and commercial establishments; employees in offices; workers in transportation, delivery and express service; workers in "domestic service on land or water, in any establishment"; those in miscellaneous occupations; and persons whose salaries or wages are higher than the minimum fixed by the Order. For the protection of workers who on January 1, 1938 were receiving more than the legal minima, it is laid down that their wages may not be reduced nor may the wage of persons employed to replace them be lower than that paid on January 1, except in the case of persons engaged after that date who receive at least \$200 a month. For the purposes of the Order, the province is divided into four zones. Zone I consists of the Island of Montreal and the cities and towns within a radius of five miles from the Island. Zone II embraces Quebec City and municipalities with a population of 10,000 or more. Cities and towns with a population of from 2,000 to 10,000 are included in zone III. All other cities and towns make up zone IV. The order does not apply to rural districts. Different minima may be set for the same type of labour in each zone. For certain seasonal industries in Category I, special minimum rates are set: in the canning of fruits and vegetables a flat rate of 14¢ an hour in all zones is set for workers employed in establishments operating between June 15, and October 15; in the maple sugar industry in all zones from April 1, to June 15, 15¢ is the rate; and in the handling and stemming of Canadian tobacco in Zones III and IV from June 15, to October 15, 14¢ is to be paid to one half of the workers and 15¢ to the other half.

In New Brunswick, no general orders regarding minimum rates of pay have yet been made under the Fair Wage Act, but in connection with complaints as to conditions in certain plants, specific orders have been made by the Fair Wage Board fixing minimum rates of wages and maximum hours.

(2) Industrial Scope:

In Alberta, British Columbia, New Brunswick and Ontario, the statutes have always applied to all female workers in any business, trade or occupation, except domestic servants and farm labourers, with the added exception in British Columbia of fruit pickers.

In Nova Scotia, Manitoba and Saskatchewan, the first statutes applied to females employed in factories, mail-order houses and shops but in Manitoba, the term "Shop" included the place of business of a news agent, messenger services and also hotels and restaurants.

In Nova Scotia, female workers in any trade or occupation are now within the Act.

In Manitoba, the present Act applies to offices and places of amusement and any trade or business brought within the scope of the Act by the Lieutenant-Governor in Council, on the recommendation of the Minimum Wage Board, as well as to shops, factories, mail-order houses, beauty parlours and barber shops, messenger services, hotels and restaurants.

In Saskatchewan, in addition to factories, mail-order houses, and retail stores, all beauty parlours and barber shops and hotels and restaurants are now within the scope of the Act.

In Quebec, the original Minimum Wage Act covered only industrial establishments but commercial establishments have been covered since 1932 and hotels and restaurants in towns of 5,000 or more since 1935. The Fair Wage Act, 1937, applying to both males and females and repealing the Women's Minimum Wage Act, includes all occupations except farm work and domestic service.

(3) Hours of Labour:

The hours of labour of women and young persons in factories are limited in all the provinces but Prince Edward Island and Nova Scotia by the factory law. For work in shops, only the provinces of Ontario and Quebec have limited the hours of females by direct enactment of the legislature. (167)

In Ontario and Quebec, no authority over working hours was given to the Board in the first minimum wage legislation but in 1922 the Ontario statute and in 1930 the Quebec Act were amended to authorize the Minimum Wage Board to specify the work-period to which the minimum wage applied and to fix a minimum rate for any time worked in excess of the specified period. The Nova Scotia Act was amended in a similar way in 1924 and the New Brunswick, as first enacted in 1930, made the same provision.

In Ontario in 1934, the Minimum Wage Act was amended by stipulating the maximum weekly hours to which the minimum rates were to apply. These hours varied with the size of the municipality. In the revised Ontario Minimum Wage Act of 1937, the same provision is made. As presented to the Legislature, the Ontario Bill of 1937 gave the Board authority to limit hours but this provision was amended in committee to grant only the same power with respect to hours as in the old Act but providing for a punitive rate for overtime.

In Quebec no change was made in the section of the Women's Minimum Wage Act concerning hours of labour but the Fair Wage Act, 1937, applying to both men and women and repealing the earlier Act, gives the Fair Wage Board power to limit the hours of work.

(4) Overtime:

In Ontario, until the amendment of the Act in 1934 specifying the maximum weekly hours to which the minimum wage was to apply and requiring extra hours to be paid for at not
(167) See Chapter 2 on "Hours of Labour".

less than pro rata, the minimum weekly wage applied to a week's work regardless of the number of hours except in the orders covering laundries and dry-cleaning establishments and hotels and restaurants where overtime after 50 hours had to be paid for. Outside of the orders governing these two classes of establishments, no use appears to have been made of the power, given in 1922, to make the established minimum wage relate to a certain number of hours and to require payment for hours worked beyond the specified number. Most of the Ontario orders were made in the years between 1921 and 1924. The revised Minimum Wage Act, 1937, of Ontario reproduces the amendment of 1934 but stipulates that payment for overtime shall not be less than at an hourly rate equal to one-fortieth of the minimum wage.

In British Columbia, the Hours of Work Act, which, in a large measure, implements the International Labour Convention concerning hours of labour in industrial undertakings makes no express provision with regard to payment for overtime but the orders made under the Female and Male Minimum Wage Acts require, in most cases, a higher rate for any work permitted in excess of eight hours a day and 48 a week. This higher rate appears to be approximately one and one-half times the regular hourly rate and, in a few cases, where particularly long hours are worked, double the rate is required for any hours above 12 in a day, as for example, in the fruit and vegetable industry.

In Saskatchewan, under the Minimum Wage Orders effective on January 10, 1938, and which apply to both male and female workers in cities and within a five-mile radius, overtime beyond the basic 48-hour week in shops, factories, hotels, restaurants, etc., (60-hour week for bell-boys, elevator operators and porters in hotels) and in beauty parlours and barber shops must be paid for at not less than 30¢ an hour if the worker is experienced, or 25¢ an hour if inexperienced.

But messengers and errand boys from shops or warehouses and inexperienced minor employees in beauty parlours and barber shops may be paid a minimum of 20¢ an hour for overtime work.

(5) Part-time and Short Time:

Under the laws of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Nova Scotia, the Minimum Wage Boards have power to fix special rates for part-time workers.

In Manitoba and Saskatchewan a higher hourly rate is fixed under certain orders for part-time workers. ⁽¹⁶⁸⁾ In Saskatchewan no experienced person working fewer than 43 hours a week may be paid less than 30¢ an hour and no inexperienced worker less than 25¢ an hour, except that messengers and errand boys and inexperienced minors in beauty parlours and barber shops may be paid a minimum of 20¢ an hour.

In Alberta orders made in 1925 stipulated that, where the usual working hours of an establishment were forty or more and a female employee worked less than the usual number, a pro rata deduction might be made from the minimum wage based on the usual number of hours worked in the plant but, where the usual number of hours was less than 40, the amount paid must bear the same relation to the minimum wage as the number of hours of employment bears to 40. New orders, effective November 30, 1937, require any female employed by the hour or by the day or for any period less than six consecutive days to be paid at least 30¢ an hour and to be paid for not less than four hours a day. In the case of employment in theatres,

(168) In Manitoba, from January 1933 to December 31, 1934, and in Saskatchewan, from April 1, 1932 to December 31, 1934, the minimum wage rates were reduced by 10 per cent. In Saskatchewan the reduction did not at first apply to persons working less than the maximum number of hours permitted by the Orders. In March 1934 a revised order stipulated that, where the minimum wage was less than \$13 it should be reduced by 10 per cent and, where it was \$13 or over, by 15 per cent; but it was provided further that the cut should not be more than 10 per cent in the case of any person working less than full time but more than 24 hours a week and no reduction was permitted in the minimum rate for any person working less than 24 hours.

however, such employment must be paid at not less than 50¢ an hour and for not less than two hours.

Orders under the Alberta Male Minimum Wage Act require that any person who is not employed for more than four consecutive hours must be paid not less than 30¢ an hour and no person may be paid for less than four hours.

In British Columbia, higher hourly rates for part-time employees are usually required under both the Female and Male Minimum Wage Acts and payment must be made for at least four hours. Part-time work is defined as work for less than 40 hours a week, or, in other cases, for less than 37½ hours a week.

In Nova Scotia where the first minimum wage regulations were made in August, 1930, it was stipulated in all orders that the minimum wage should apply to a work-period ranging from 44 to 50 hours and that work for hours fewer than 44 must be paid for at an hourly rate based on the minimum wage for the regular working period of the establishment but for not less than 44 hours.

In Ontario, under an order of 1923, employees in hotels and restaurants and, under orders of 1921 and 1922, persons working in retail stores, were to be considered as part-time workers only if they worked less than 36 hours a week. Such part-time work was to be paid for at a rate proportionate to the minimum wage for the normal working week of the establishment. But in 1930, it was provided that any person in a Toronto shop working less than 44 hours a week, if the normal work period was more than 44, should be paid at a rate based on the minimum wage for a normal week.

The only orders now in force in Ontario, which contain any express provision for part-time workers are those applying to retail stores and beauty shops. The latter order merely requires that such persons be paid pro rata. The retail stores order, as amended in September 1936, stipulates that persons

who regularly work not more than 10 hours a week must be paid at the hourly rate for experienced employees regardless of age or length of employment. Those who work for more than ten hours may be paid pro rata according to age and experience. The revised Act of 1937, applying to both men and women, but under which no general order has yet been made, stipulates that hourly rates may be established for employees who regularly work less than forty hours a week provided that such rate be not less than one-fortieth of the minimum wage.

In Quebec, the order of the Fair Wage Board in effect on May 15, 1938, requires any worker employed less than thirty hours a week to be paid at 15% above the minimum and any employee called to work and working less than a regular day must be paid for at least three hours.

(6) Apprentices and Learners:

In British Columbia, under the Female Minimum Wage Act, it is provided that in the case of an employee over 18 years of age with no experience in an industry in which apprentices are not usually employed, the Board may grant a special licence authorizing her employment at a wage lower than the established minimum but it is stipulated that the number holding such licences in any plant may not exceed one-seventh of the total number of employees. The aggregate number of such employees and of employees under 18 years of age in any plant may not exceed 35% of the whole number of employees.

In the other provinces, the proportion of apprentices, learners, etc., that may be employed is fixed by the Board or by order in council.

In Alberta, Manitoba and Nova Scotia, the number of apprentices, inexperienced workers and girls under 18 may not exceed 25% of the total number of females employed.

In Ontario the only orders which now restrict the number of inexperienced workers are those governing shops and laundries throughout the Province and custom millinery in

certain cities. Hairdressing and kindred trades are regulated under the Apprenticeship Act of Ontario. Earlier orders limited the proportion of the number of girls under 18 or of inexperienced workers over 18 in shops and laundries to 25% and in factories to 33 1/3% of the total female working force, except when there were less than four employees. An order, effective from November 1, 1936, increases the proportion in shops and laundries to 40%. The present order regarding factories apparently places no limitation on the number of inexperienced workers.

Under the most recent orders issued by the Women's Minimum Wage Commission of Quebec, which has now been abolished but the orders of which remain in effect outside cities and towns, workers are not classified as experienced and inexperienced but it is stipulated, in some cases, that 65% or, in other cases, 70% of the female workers must be paid not less than the full minimum wage. The other 30% or 35% are divided into two groups with lower minimum wages. Before this revision of the Quebec orders, the number of inexperienced workers was limited to one-half of the total number of females employed in most of the establishments covered by the Act. Under Order No.4 of the Fair Wage Board, three minimum rates are fixed for workers in industrial establishments, in cities and towns, the highest applying to at least 60% of the employees, the next to not more than 25% and the lowest to not more than 15%.

International Labour Convention:

The International Labour Conference of 1928 adopted a draft convention for the creation of minimum-wage fixing machinery. The workers for whom minimum rates of wages were to be established were those employed "in trades , and in particular in home-working trades, in which no arrangements exist for the effective regulation of wages by collective

agreement or otherwise and wages are exceptionally low".

"Trades" includes manufacture and commerce.

The Convention stipulates that, while each country is free to decide the nature of the machinery to be set up for the fixing of minimum wages, representatives of employers and employees, including representatives of their organizations, if any, shall be consulted, that the employers and employees concerned shall be associated in the operation of the machinery on equal terms and that the minimum rates of wages which have been fixed shall not be varied by individual agreement or, except with the consent of the competent administrative authority, by collective agreement.

None of the Canadian minimum wage laws, except the Quebec Fair Wage Act, 1937, is expressly limited in its application to trades in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise. The first minimum wage Acts applying only to women were almost entirely so limited in practice. Only in a few factory trades, such as printing and book-binding and clothing, where considerable numbers of women were employed, were there trade unions which had arrived at agreements with some employers when the first minimum wage laws were passed.

The Quebec Fair Wage Act is declared to apply (a) "to all employees who have not availed themselves, or who do not desire or are unable legally to avail themselves, of the provisions of the Act respecting workmen's wages; (b) in all cases where it is shown to the Board's satisfaction that an association of employees cannot agree with an association of employers or with one or more employers contracting personally for the adoption of a collective labour agreement in virtue of the said Act respecting workmen's wages."

The only boards administering minimum wage laws which are required at the present time to be composed of representatives of employers and workers are the Manitoba Minimum Wage Board and the New Brunswick Fair Wage Board. The International Labour Convention requires, however, that representatives of employers and employees in the trade in which it is proposed to fix a minimum wage shall be consulted and shall have a part in fixing the wage. In none of the Canadian laws is this requirement met. Under the Alberta Minimum Wage Act applying to women and the Ontario Act, the Board may call a conference of employers and employees in the trade but the function is permissive, not mandatory.

On the other hand, the Industrial Standards Acts of Alberta, Nova Scotia, Ontario and Saskatchewan, require that the minimum wage and maximum hours to be fixed for any trade must be agreed upon by representatives of employers and employees. As these laws were passed where union wage scales, particularly in the building trades, were being broken down, they were taken advantage of by trade unions and employers to correct this situation and curb the employer who paid excessively low wages.

DETAILS OF THE ONTARIO MINIMUM BUDGET FOR SINGLE
WORKING WOMEN (a)

<u>Item</u>	<u>Cost per year</u>
Board and Lodging at \$7.00 per week.....	\$364.00
Clothing:	
Footwear and repairs, 3 pairs \$5.00, \$4.00, \$4.00; bedroom slippers 80¢, rubbers 50¢, goloshes \$1.50, repairs \$2.00.....	\$17.80
Stockings.....	7.50
Underwear.....	8.00
Nightgowns.....	4.00
Costume slips.....	3.50
Corsets and brassieres.....	5.50
Kimona (two years).....	1.00
Hats.....	9.00
Suit (half cost to wear two years) or skirt (one year, \$5.00) and light coat (two years \$12.50).....	11.25
Winter coat to wear two years.....	8.25
Winter dresses.....	10.00
Summer dresses, two or three.....	10.00
Blouses.....	7.50
Sweater (two years).....	2.00
Aprons.....	2.50
Handkerchiefs.....	1.50
Gloves.....	3.50
Scarf.....	1.00
Umbrella, to last two years.....	1.25
Total expense for clothing.....	115.05
Sundries:	
Laundry.....	39.00
Doctor, dentist, optician.....	20.00
Car fare.....	48.00
Reading matter.....	6.00
Postage and stationery.....	5.00
Recreation and amusement.....	23.00
Church and charity.....	10.00
Incidentals, including tooth brush, comb, soap, tooth paste, talcum powder, nail file, shoe polish, hand lotion, pins, needles, thread, whisk, shoe laces, etc....	20.00
	<u>171.00</u>
Total expenses for year.....	\$650.05
Clothing per week.....	2.21
Sundries per week.....	3.29
Board and lodging per week.....	<u>7.00</u>
Total per week.....	\$ 12.50

(a) Report of the Minimum Wage Board of Ontario, 1933, p.8.
The budget given above is introduced with the following words,
"Minimum wage levels are determined by the cost of living.
It is necessary to determine the least sum upon which a working
woman can be expected to support herself. Here is the budget
for Toronto as revised several times during 1933".

Methods of Establishing Minimum Wages:

There are several means of fixing minimum wages, some
(169)
of which may be combined. The chief methods are:

1. direct legal enactment. The setting of a minimum wage by statute is commonly regarded as too inflexible for the needs of modern industry. It does not take into account regional differences or the varying capacity of industries to pay, or provide for revision of rates with changes of cost of living or other factors. It is usually applicable only to the lowest grade of workers. It is used in some American states for fixing a female minimum rate, but it has not found favour
(170)
among nations generally.
2. trade boards. This is the most commonly used machinery for fixing minimum wages. It is used extensively in Australia, Great Britain, South Africa, Europe and in some of the countries of South America. The procedure is to appoint a board with powers to fix wages and to regulate conditions of labour only in the industry for which it has been set up. Usually equal numbers of representatives of employers and workers are appointed, along with qualified disinterested persons. Where the industry is an important and wide-spread one district boards are often appointed as well as a national one. Under this system, the participation of the state is kept at a minimum; the boards are responsible for both fixing and enforcing rates.

(169) See J. H. Richardson, "The Minimum Wage" London, 1927, for a general discussion of these various techniques.

(170) See the Report of the Industrial Legislation Commission, South Africa, 1935, p.44 seq. for arguments against a national minimum wage.

3. central commissions: A single statutory authority fixes rates for all industries. This is the favoured system in Canada and the United States where the commission fixes different rates for each industry rather than a general minimum for all industries. One of the merits of this system is that it allows the greatest possible coordination of minimum rates. On the other hand, it throws a great body of work on one authority that cannot possibly bring to its task the special knowledge of each industry that a trade board can.

4. arbitration courts: The main purpose of a system of compulsory arbitration is to further industrial peace, and its wage-fixing functions only arise, therefore, in cases of dispute. However, over a period of time the decisions of the court and the principles enunciated therein cover practically all of industry; and a quite complicated structure (171) grows up. Australia and New Zealand have developed the arbitration court as a medium for fixing wages to a high degree, and there it covers almost all industries and all categories of labour.

5. legal extension of collective agreements. Legislation providing for the extension of collective agreements to all or a part of an industry by law has only recently been (172) passed in Canada but has been in existence during most of the post-war period in Germany, Austria, South Africa and certain states in Australia. It is minimum wage legislation in the sense that no wages lower than those of the collective agreement can be paid, but as all workers do not work under collective agreements, it is always used in conjunction with one of the other methods of fixing minimum rates.

(171) See George Anderson, "Fixation of Wages in Australia", Melbourne, 1929, for a good account of the scope and complexity of the Australian system.

(172) See Chapter 4 for an analysis of this legislation.

APPENDIX IV. Legislation Making Legally Binding certain Agreed Conditions as to Wages and Hours of Labour in Quebec, Ontario, Alberta, Nova Scotia and Saskatchewan.

(173)

Workmen's Wages Act, 1937, of Quebec.

Either party to a collective bargaining agreement may petition the Minister of Labour to have the clauses regarding wages, hours of work etc., made obligatory on all employers and employees in "the same trade, industry, occupation or commerce" in one part or throughout the Province.

The petition is then published in the Quebec Official Gazette and in an English and French newspaper, and thirty days is allowed for objections. The Minister, if he deems the terms of the agreement to "have acquired a preponderant significance and importance for the establishing of conditions of labour without serious inconvenience resulting from the competition of outside countries or the other provinces", may recommend the approval of the request to the Lieutenant-Governor-in-Council with any changes he deems expedient. The order-in-council approving the agreement becomes obligatory from the date of its publication in the Quebec Official Gazette.

Agreements remain in force for the period stipulated therein, many of them continuing from year to year, subject to notice. Agreements may be amended or repealed by the same procedure as required for a new agreement.

For the enforcement of each agreement, a joint committee must be formed from representatives of each party. The Minister may at any time add to the committee not more than four members representing equally the employers and employed who are not parties to the agreement. This selection

(173) By a 1938 amendment the title of this Act was changed to "Collective Labour Agreements Act."

is made from a list of nominations submitted to the Minister by these employers and employees.

The joint committee must draw up by-laws to govern its procedure and when such by-laws have been approved by the Lieutenant-Governor-in-Council, the joint committee constitutes a corporation with power: to compel employers to keep certain records; to levy a maximum assessment on both employers and employees or on employers only for its expenses of one-half of one per cent of the employer's payroll and the workman's wages; to institute proceedings for violation of the Act or orders; to lay down special conditions for handicapped workers; to set up boards of examiners to issue the certificates as to competency of workers, which may be required in any municipality with a population of over 5,000. The committee, with the approval of the Lieutenant-Governor-in-Council, may allow an association of employees to issue such certificates. Appeals may be made to the Minister of Labour in specified instances. The Act provides penalties for violations including discrimination against an employee for giving evidence or making a complaint.

The Act also makes it illegal to prevent an employer joining an "association" of employees. Prosecution in such a case may be instituted by the Minister of Labour, by a joint committee under the Act or by any person having a written authorization from the Attorney General.

Industrial Standards Act, 1935, of Ontario.

When a conference has been duly called it may draw up a schedule of maximum daily and weekly hours, the period in the day and the days in the week during which work may be done, and the minimum rates of wages for the various classes of workers for regular hours and for overtime. In addition to wages, a schedule may fix the minimum charge that may be

made for services, and, with the approval of the Labour and Industry Board, fix the minimum charge that an employer or employee may contract for or accept for any service or work. Under this last provision, minimum prices charged by barbers and the minimum rate paid their employees have been fixed.

If, in the opinion of the Ministers, the schedule submitted by a conference "is agreed to by a proper and sufficient representation of employers and employees", he may approve it and, on his recommendation, the Lieutenant-Governor-in-Council may declare it in force during pleasure or for the period not exceeding twelve months stipulated in the schedule. A schedule comes into force ten days after publication of the order-in-council in the Ontario Gazette unless it is provided otherwise. There is no provision in the Act similar to that in the Quebec Workmen's Wages Act requiring publication of a schedule before approval by order-in-council so that objections may be heard.

For every zone or zones to which any schedule applies, the Minister may establish an advisory committee of not more than five members, one of whom shall be chairman, to hear complaints of employers and employees and to assist generally in carrying out the provisions of the Act and the regulations. Such a committee may fix lower rates for handicapped and certain other workers.

The Industry and Labour Board of Ontario, which also administers the Minimum Wage Act, has authority: to administer and enforce the Industrial Standards Act, the schedules and the regulations; to hear appeals from the decisions of any advisory committee; to make an order with the concurrence of the proper advisory committee amending the provisions of any schedule, which must be gazetted and becomes effective on the tenth day after such publication; to collect and pay out wages due to any employees under any

schedule; to determine which industries are interprovincially competitive and for such industries it may approve provisions in a schedule for assessing employers only or employers and employees in order to provide revenue to pay inspectors and meet other expenses for the enforcement of the schedules in such industries. It is stipulated, as in the Quebec Workmen's Wages Act, that any assessment for this purpose shall not exceed one-half of one per cent of an employer's payroll and of an employee's wages. Where such assessment is approved, the Board may require the advisory committee to furnish quarterly reports of receipts and expenses and annual estimates of receipts and expenditures.

The Lieutenant-Governor-in-Council may appoint industrial standards officers to assist in carrying out the provisions of the Act and schedules, and such officers have authority to conduct inquiries and investigations. Penalties are provided for violation of the Act or any schedule by either employer or employee but no prosecution may be instituted under the Act without the consent of the Labour and Industry Board. In case of a conviction for paying lower wages than those fixed in a schedule, the employer is also required to pay the wages due.

Industrial Standards Act, 1935, of Alberta.

In 1935, Alberta passed an Act similar to that enacted in Ontario in 1935. The Minimum Wage Board was charged with the enforcement of the new Act but in 1937, the Board of Industrial Relations replaced the Minimum Wage Board. The Minister may convene a conference or series of conferences as in Ontario and the schedule of wages and hours of labour drawn up may become binding ten days after publication in the Alberta Gazette and for a period not exceeding twelve months. As amended in 1938, the Alberta

statute permits the majority of the employers and employees at a conference held under the Act to submit a schedule of wages and hours to the Minister. Unlike Ontario, no special provision is made for another conference at the expiration of the original schedule.

In every zone or zones to which any schedule applies, the employees and employers engaged in the industry may establish a board of not more than five members, to hear complaints of employees and employers and to assist in enforcing the schedule.

As in Ontario, both employers and employees violating the provisions of the schedules are liable to penalties, and so are employers who refuse the required information. There is an additional penalty in Alberta, under the amended Act, for any employer and employee who by collusion evade the payment of the minimum wage, and for an employer who discriminates against an employee who makes a complaint or testifies in any proceedings under the Act. No extended statement of the duties and powers of the Board administering the Act, such as that included in the Ontario Act in 1936 and 1937, appears in the Alberta Statute.

Industrial Standards Act, 1936, of Nova Scotia.

Except for its limited application to the building trades in the city of Halifax and the town of Dartmouth, this Act is generally similar to the Industrial Standards Act of Alberta and the Act in Ontario as originally enacted. But in Nova Scotia a schedule, which becomes binding ten days after publication in the Royal Gazette, is to remain in effect for the period fixed in such schedule and is not limited to one year as in the other two provinces.

The Minister of Labour is charged with the administration of the Act and the Governor-in-Council may appoint

inspectors to enforce the schedules.

Industrial Standards Act, 1937, of Saskatchewan.

The Saskatchewan Industrial Standards Act, 1937, as amended in 1938, is somewhat similar to the Ontario Act as amended and outlined above, with the following exceptions:

In place of the Industry and Labour Board of Ontario, the Commissioner of Labour and Public Welfare has authority to enforce the provisions of the Act and of the regulations and schedules. No further definition of this jurisdiction is given except that appeals may be made to him from decisions of advisory committees.

Upon the petition being received, the Minister of Municipal Affairs may authorize an industrial standards officer to convene a conference, but notice of the conference must be inserted in at least two issues of a newspaper published or circulating in the district at least two weeks before the date fixed for the conference. Before being made binding a schedule must be agreed to by a majority of the employees affected and by employers representing a major part of the volume of business in the industry in question. A schedule is effective on the tenth day after being gazetted.

For the advisory boards of five members each, which the Minister may establish, two members are to be nominated by the employers, two by the employees and the Chairman by the Minister. Appeals from the rulings of this Board may be made to the Commissioner whose decision is final. As in Ontario, no prosecution may be instituted without the consent of the commissioner.

Agreements or Schedules in Effect Under the Quebec Workmen's Wages Act and the Industrial Standards Acts of Alberta, Nova Scotia, Ontario and Saskatchewan.

The trades or industries in which wages and hours are governed by orders-in-council making binding collective agreements or schedules of wages and hours of labour under

the above statutes, may be listed as follows: (November 1937)

Quebec: Construction - all trades throughout the province except in four small counties in Eastern Townships and six in or along the Gaspé Peninsula.
Longshoremén - inland and coast trade (except grain) at Montreal; all trade at Sorel.
Clothing, men's and women's - three agreements each covering the province.
Millinery - Island of Montreal and within 50 mile radius.
Gloves - two agreements each covering whole province.
Furs - as in millinery.
Boots and shoes - whole province.
Furniture (wood) - whole province.
Printing (job) - cities of over 11,000.
Ornamental iron - two districts.
Granite, marble or stone - whole province.
Iron oxide mining - district in which are situated all mines now producing.
Aluminium smelting - Shawinigan Falls and Arvida (only plants).
Baking - five largest cities and Sorel.
Barbers and hairdressers - eighteen districts (some include ladies' hairdressing, others do not.)
Butchers - Sorel.
Shoe repairing - Montreal and Victoriaville.
Horse-shoers and Wheelwrights - four counties.
Taxi-drivers - Sorel
Clerks and Accountants - Jonquiere, Arvida (except Aluminum Company), St. Joseph d'Alma, Kenogami.

Ontario: Building trades in twelve cities or towns - one or, in some cases, the majority of the trades covered.
Clothing - men's clothing and women's cloaks and suits - two agreements covering province.
Millinery - whole province.
Furniture (wood) - whole province.
Furniture (soft, chesterfields, etc.) Toronto and vicinity.
Brewing - whole province.
Logging - three districts.
Baking - Ottawa.
Barbers - thirty-one cities and towns.

Alberta: Building trades - two trades in Edmonton and Calgary.
Brewing - whole province.
Baking - two large districts.
Creosote workers - Calgary
Taxi-drivers - Edmonton.

Nova Scotia: Building trades in Halifax and Dartmouth - four trades.

Saskatchewan: Building Trades - one trade in two cities, two trades in third city.
Barbers and hairdressers - three cities.
Shoe repairing - Regina.

The details of the industries analyzed in Chapter IV are given below.

I

Competitive Industries

Clothing Two of the main divisions of the clothing industry, men's and boys' suits and overcoats and women's coats and suits, have been, to a great extent, working under agreements between the trade unions and employers for a number of years. In both Quebec and Ontario wages and hours in these industries are governed by orders-in-council. The women's dress industry in general and the men's work-clothing industry, although organized and under union agreements to a considerable extent, have not been brought under legalized agreements. Dress cutters in the women's dress industry, however, are covered in Quebec.

(a) Men's and Boys' Clothing - Since October, 1936, this industry has been covered by orders-in-council in Ontario and Quebec with similar wage rates. The industry is well organized by the Amalgamated Clothing Workers of America. In March, 1935, an agreement in this industry was first made binding throughout Quebec. It provided for a minimum wage scale and a 44-hour week in one zone and 48 hours in the rest of the Province. The wage scale has been amended several times but the hours are unchanged. On January 1, 1937, workers were reclassified and wage rates increased, by from 5% to 15% for piece workers. The Province is divided into three zones, Zone I, the Island of Montreal and within 10 miles of it, Zone II within 75 miles of the boundaries of Zone I, and Zone III the rest of the Province.

In Ontario, a schedule of wages and hours in this industry came into effect on October 1, 1936, to continue "during pleasure". Regular hours are limited to 44 in all parts of the Province. The wage-rates differ in the two

zones. Zone I includes the counties of Ontario, York, Peel, Halton and Wentworth, with Toronto and Hamilton and Zone II, the rest of the Province.

The classification of workers according to skill is not entirely uniform in both provinces. The wage-rates for the principal classes in each province are shown in Table 27.

TABLE 27

Minimum Hourly Rates in the Men's & Boys' Clothing Industry in Quebec and Ontario.

Quebec -- Coats, Vests and Pants Departments.

Class (Occupation)	Zone I cents	Zone II cents	Zone III cents
AA	76	68	64
A	71	64	61
BB	65	58	55
B	63	56	53
C	60	54	51
D	53	48	45
EE	47	42	40
E	45	40	38
FF	38	34	32
F	36	32	30
G	31	28	26
H 1st 6 months	17	15	13
2nd 6 months	20	18	17
3rd 6 months	24	21	19
4th 6 months	28	25	23
After 2 years	31	28	26
K	16	14	13
<u>Odd Pants</u>			
A	68	61	59
Bx	61½	55½	52½
Cx	57	51	48
Dx	50	45	42½
Ex	41	37	35
Fx	35	30	28
Gx	28½	25½	24½
Hx	16- 28½	14- 25	13- 22

Ontario -- Coats Vests and Pants Departments

Class	Zone I cents	Zone II(a) cents
A	70	
B	65	
C	62	
D	61½	
E	60	
F	57	
G	50	
H	45	
I	41	
J	37	
K	35	
L	33	
M	31	
N	28½	

(a) Rates in Zone II are 12½% less than Zone I in each case.

Ontario (cont'd)

Odd Pants

Class	Zone I
A	68
B	50
C	43
D	41
E	40
F	33
G	28 $\frac{1}{2}$

(b) Women's Cloaks and Suits - Since February, 1937, the same minimum wage rates and maximum hours have applied in Quebec and Ontario. An agreement first made obligatory in Quebec in November, 1935, provided for a minimum wage scale and a 44-hour week but from January 1, 1936, a 40-hour week and increases in the minimum hourly rates of from 3 to 5 cents were to be effective. The same wage scale and 40-hour week remain in effect although other changes have been made.

In February, 1937, the same conditions were made binding in Ontario under the Industrial Standards Act.

(Table 28) In both provinces, the International Ladies' Garment Workers' Union was behind the agreement.

TABLE 28

Minimum Hourly Wage Rates in Cloak and Suit Industry in Quebec and Ontario.

<u>Time Work</u>	<u>Cents</u>
skilled cutters	80
semi-skilled cutters	55
trimmers	60
fur tailors	65
assistant fur tailors	44
button sewers, general hands and examiners	34
<u>Piece or time work</u>	
skilled operators (male)	80
skilled operators (female)	64
semi-skilled operators (male)	55
semi-skilled operators (female)	49 $\frac{1}{2}$
section operator, top pressers, machine pressers	80
under pressers	75
piece pressers, machine basters, hand basters and special machine operators	44
lining makers, finishers and skirt makers	42

(c) Infants' and Children's Clothing -

In Quebec, this section of the industry was included in the agreement covering men's and boys' clothing from January 1, 1937. There is no similar regulation in Ontario. The zones are the same as for the men's and boys' clothing industry in Quebec and the hours are also 44 per week in Zone I and 48 per week in Zones II and III.

(d) Dress Cutters

Throughout Quebec, dress-cutters have had minimum wages and maximum hours legalized. Since September, 1936, weekly hours have been 44 and minimum weekly rates \$30 for cutters and \$20 for choppers.

Millinery

In Quebec, wages and hours in the manufacture of women's and children's millinery in a zone which includes the Island of Montreal and within a radius of 50 miles of its limits have been regulated under the Act since July, 1935. The minimum wage-rates were raised by \$1 per week from July 1, 1937.

In Ontario, this industry has also been regulated from July, 1935, under three successive schedules, the present one dating from October 31, 1936, and to remain in effect "during pleasure." (Table 29).

There is also a trade union in this industry, the United Hatters, Cap and Millinery Workers' International Union of America, which obtained the agreement in Quebec and petitioned for a conference to draw up a schedule in Ontario. A request for the extension of the agreement between this union and manufacturers of men's and boys' hats and caps, throughout the Province of Quebec, has recently been published.

In both the Montreal district and in the Province of Ontario, regular hours for these workers are restricted to 40 per week.

TABLE 29

Minimum Weekly Wage Rates in the Millinery
Industry in Ontario and Quebec

<u>Montreal district</u>		<u>Toronto district</u> (a)	
Hand blockers	\$32	Hand blockers	\$32
Blockers	29	Blockers	29
Fabric operators	29	Pouncers and buffers	29
Straw operators	29	Operators	29
Cutters	29	Cutters	29
Drapers	20	Drapers	19
Draper-trimmers	17	Trimmers	15
Trimmers	15	Preparers	15

(a) In the Province of Ontario outside the city of Toronto and within 50 miles of it the minimum rates are $12\frac{1}{3}\%$ less.

Glove manufacturing

This industry is regulated by a legalized agreement only in Quebec where it is over twice as extensive as in Ontario, the fine leather glove industry since 1935 and leather work gloves since 1936. Hours in fine gloves are limited to 49 per week throughout the Province. Wages are fixed on a piece-rate basis. In towns of less than 15,000 the rates are 10% less. From October 1, 1937, piece rates were increased 10%. In work gloves, hours were 48 per week to September 30, 1937, and 44 per week from October 1. From July 1, 1937, the piece-work wage scale was increased 15% over the previous rates.

Fur Industry

Since 1935, an agreement under the Act has been binding in the fur industry on the Island of Montreal and within 50 miles of it. On the Island and within 10 miles of it for all workers, and in the whole district in establishments with more than three workers, hours are limited to 40 per week; in the area within a radius of 40 miles of the first area, in establishments of three workers or less, 48 hours per week is permitted. The following weekly wage rates are in effect:

Fur Industry (cont'd)

	<u>1st class</u>	<u>2nd class</u>
cutters	\$35	\$28
operators (male)	28	20
operators (female)	20	15
finishers (female)	18	14
examiners	24	20

This industry has not been brought under the Industrial Standards Act of Ontario but the union has an agreement in Toronto providing for a 40-hour week and nine weekly rates of \$40 and \$35 for cutters, \$30 and \$25 for male operators, \$25 and \$20 for female operators and \$30 and \$25 for female finishers.

Boot and Shoe Industry

An agreement covering male employees in the boot and shoe industry was made obligatory in 1934 in Quebec and continued until September, 1937, when a new agreement, including female workers, was legalized with higher wages by 15 to 16 cents an hour for the highest paid classes and practically no change for the lower grades. The Province is divided into three zones: Zone I, the Island of Montreal and within five miles of its limits; Zone II, the city of Quebec and within five miles of its limits; Zone III, the whole Province with the exception of Zones I and II. Female workers engaged in operations not in one of the six classes shown below are to be paid according to the Minimum Wage Order.

Minimum Hourly Wage Rates in the Shoe Industry, Quebec.

<u>Class</u>	<u>Zone I</u>	<u>Zone II</u>	<u>Zone III</u>
I	55	52 $\frac{1}{2}$	48
II	45	42 $\frac{1}{2}$	39
III	35	33	31
IV	25	24	22
V	18	17	16
VI	13	12 $\frac{1}{2}$	11 $\frac{1}{2}$

The number employed in shoe factories in 1935 in Quebec was 10,106, in Ontario, 5,243. There is no schedule under the Industrial Standards Act in Ontario but minimum wage regulations for female workers apply to this industry as to others.

Furniture Industry

The furniture industry is within the scope of both the Workmen's Wages Act of Quebec and the Industrial Standards Act of Ontario,

In Ontario, a schedule was in effect throughout the Province with the exception of Toronto, from August, 1935, to July 1, 1936. Minimum rates were 30 and 28 cents until March 1, 1936, and 2 cents higher from that date for unskilled adult male workers. A new schedule under this Act in March, 1937, covers Toronto, as well as the rest of the Province, and provides for increased wage rates.

An agreement under the Quebec statute was made obligatory in October, 1935, and amended to increase wages in January, 1937. A new agreement, effective from September 1, 1937, provides for higher rates for the higher grades of workers and a higher average rate but a small percentage of workers may be paid a lower rate. Further increases are to become effective January 1, 1938.

Under the present agreement, a 55-hour week is in effect. The Province is divided into three zones, and three minimum rates are given for each zone, with the provision that 20% of the adult male employees must receive the highest minimum paid for the zone, an additional 30% at least the intermediate rate and the remaining employees at least the lowest rate for that zone. Zone I is the Island of Montreal, Zone II, other municipalities (outside the county of Chicoutimi) with a population of 3,000 or more and establishments in any municipality (outside the Island of Montreal

and county of Chicoutimi) with over 50 workers, Zone III, all other establishments in the Province.

In Ontario under the 1937 schedule, a 47-hour week is effective and two zones are indicated. Zone I is the cities of Toronto, London, Woodstock, Kitchener, Guelph, Hamilton, St. Thomas and Stratford; Zone II, the rest of the Province.

TABLE 30

Minimum Hourly Rates for Adult Male Workers in Furniture Industry in Quebec and Ontario.

1. Quebec (from January 1, 1938).

	<u>Zone I</u> <u>cents</u>	<u>Zone II</u> <u>cents</u>	<u>Zone III</u> <u>cents</u>
10% of employees	45	40	36
a further 10% of employees	40	35	30
" " 60% " "	35	30	25
" " 7% " "	28	25	20
" " 7% " "	22	20	16
" " 6% " "	18	15	12

2. Ontario

	<u>Zone I</u> <u>cents</u>	<u>Zone II</u> <u>cents</u>
Skilled workers	49	47
Semi-skilled workers	39	37
Unskilled workers	34	32
Average for above classes	39	37

Soft or Upholstered Furniture (Chesterfields, etc.)

This industry is regulated only in Ontario by a schedule which became effective in October, 1937, and applies to the city of Toronto and vicinity. Regular hours are limited to 44 a week. Minimum hourly wage-rates are: upholsterers, 65 cents; cutters, springer, operators, cushion fillers, finishers, trimmers, 55 cents; labourers 40 cents.

Brewing Industry

The brewing industry employs 1,887 persons in Ontario, 1,492 in Quebec, 310 in British Columbia and 227 in Alberta. There are no collective agreements in the

industry in Quebec, but in British Columbia, working conditions are governed by agreements.

In Ontario since 1935 and in Alberta since 1936 wages and hours have been regulated under the Industrial Standards Acts.

In Ontario, hours are 50 per week in summer months and 45 during winter and the same weekly minimum wage is paid for the 50-hour week as for a 45-hour week. In Alberta, hours are 44 a week for the whole year and wages are on a hourly basis. Reducing the Alberta weekly wage to an hourly rate, the following comparison may be made for the winter months when the 45-hour week is in effect in Ontario: a minimum hourly rate for coopers in Ontario, 66-2/3 cents; in Alberta minimum rates for different classes of coopers are from 68 $\frac{3}{4}$ cents to 78-1/8 cents; in Ontario the rate for bottlers operating machines, watchmen, and employees in fermenting room and cold storage, brew-house and wash-house 54 $\frac{1}{2}$ cents, bottlers not operating machines and helpers 50 cents; in Alberta, similar occupations must be paid 62 $\frac{1}{2}$ to 75 cents per hour, with a minimum of 57 $\frac{1}{4}$ cents for labourers during the first six months and 62 $\frac{1}{2}$ cents thereafter. The minimum rate for truck drivers in Ontario is \$25 per week, in Alberta \$135 per month.

Baking Industry

This industry is regulated by orders-in-council: in Quebec the five largest cities; in Ontario, in Ottawa only; in Alberta, in Calgary and Edmonton and a large area surrounding each of these cities and including many towns. The wage-rates and hours are noted on following page. In Ontario and Alberta, maximum weekly hours are fixed in the Factory Act.

TABLE 31

Minimum Wages and Hours in Baking Industry
in Quebec, Ontario and Alberta.

		Hours per week	Wages per week \$
<u>Quebec</u>			
Quebec City	Bakers	65	20 - 23
	Salesmen	--	16
Three Rivers	Bakers	(a)	15 - 22
	Salesmen	--	9 + commission
Sherbrooke	Bakers	(a)	13 - 20
Montreal	Bakers	60	18 - 22
	Salesmen	--	15
Hull	Bakers	60	12 - 28
Sorel	Bakers	60	12 - 18
	Salesmen	60	12
<u>Ontario</u>			
Ottawa	Bakers	56	18 - 21
	Salesmen	--	16
<u>Alberta</u>			
Calgary	Bakers	54	15 - 21.50
	Salesmen	--	19.50
Edmonton	Bakers	54	17 - 23
	Salesmen	--	21

(a) Hours not mentioned but number of bags of flour baked per week per baker is regulated.

Construction

In Quebec, the practice, with a few exceptions, is for one agreement to be made covering all the construction industry in a certain district, which is then brought under one order-in-council for that district. In the provinces with Industrial Standards Acts, several of the skilled trades have separate schedules.

Beginning with the larger cities in Quebec in 1934, and extending to most of the Province in 1935, agreements regulate conditions in construction and in demolition and maintenance of buildings in 93 out of the 103 counties

in Quebec. Those not covered are four rural counties in the Eastern Townships and six counties comprising the Gaspé Peninsula and immediately southwest of it. In 1935 and 1936, increases in wage-rates were made in a number of individual trades in certain districts and decreases in other cases; the decreases for the most part were a further differential of 5 cents per hour between urban and rural rates. In 1937, general increases were made of 5 to 10 cents per hour or more for the Island of Montreal and district and 5 cents per hour for two other districts.

In Ontario, in twelve cities or towns, one or in some cases the majority, of the skilled building trades, are governed by schedules. In 1935, 26 schedules, for individual trades, divided into seven cities were in effect; in 1936, 37 schedules in ten cities, and in November, 1937, 34 schedules in twelve cities or towns. Seven schedules in four cities expiring in 1936 or early in 1937 were not renewed but new schedules for carpenters in four additional towns were made in 1937. In 1936, increases were made in two trades in one city and one trade in another city (two of which had been provided for in their 1935 schedules) and a decrease in one trade in another city. In 1937, increases were made in two trades in one city and one trade in each of two other cities.

In Nova Scotia, four trades have been regulated in Halifax and Dartmouth since September, 1936.

In Saskatchewan, four schedules were made effective this year.

In Alberta, also, four schedules are now in effect. One made in 1935 and thirteen others made in 1936 expired in July or later in 1937 and had not been renewed or replaced up to the end of October.

Tables 32, 33 and 34 show wage-rates and maximum

hours in effect in the building trades under these Acts. In Quebec maximum hours in the building trades are fixed under the Limitation of Hours Act and the hours specified in the agreement conform to those fixed in the Act. In the Montreal Division, hours in the building trades are limited by statute to 8 and 44 for skilled workers and 8 and 48 for labourers. In the Quebec and Eastern Townships Division, weekly hours are 48, except on small jobs. These hours apply only to building and not to other forms of construction.

TABLE 32

Minimum Wage Rates for Certain Building Trades under Industrial Standards Act of Nova Scotia (at October 31, 1937) Saskatchewan and Alberta (November 30, 1937).

1. Nova Scotia

	<u>Wages per Hour</u>	<u>Hours Wages per week</u>
<u>Halifax and Dartmouth</u>	\$	
Bricklayers	.97½	44
Carpenters	.60	44
Electrical Workers	.80	44
Plumbers and Steamfitters	.75	44

2. Saskatchewan

<u>Moose Jaw</u>		
Carpenters	.70	44
<u>Regina</u>		
Carpenters	.75	44
Electrical Workers	.80	44
<u>Saskatoon</u>		
Plumbers	1.00	40

3. Alberta.

<u>Edmonton</u>		
Lathers - metal	.90	44
- wood	.75	44
Tile, Marble & Terrazzo layers	1.00	44
Helpers	.60	44
Wall Machine Workers	.70	44
Labourers	.50	44
<u>Calgary</u>		
Lathers - metal	.90	40
wood	.75	40
Plumbers	.95	40

TABLE 33.

MINIMUM WAGE RATES FOR CERTAIN BUILDING TRADES IN EFFECT BY ORDERS-IN-COUNCIL UNDER THE ACT RESPECTING WORKMEN'S WAGES AT NOVEMBER 30, 1937.

TRADES	Chicoutimi and Lake St. John District		Quebec and neighbouring Counties		Arthabaska County	
	(a) Rest of the district except County of Saguenay	County of Saguenay	Cities of Quebec and Levis	Thetford Mines	Rest of the District	Victoriaville & Municipalities over 2000
Bricklayers and masons	\$.70	\$.55	\$.75	\$.60	\$.50	\$.50
Carpenters & joiners	.50	.40	.55	.50	.40	.35
Cement finishers	.50	.40	.55	.40	.40	...
Electricians	.50	.50	.50	.40	.40	.35
Hoist engineers	.50-.70	.40-.55	.55	.45	.40	.30
Ironworkers-ornamental						.30
Erectors	.50	.40	.50	.50	.42 $\frac{1}{2}$	...
Helpers	...	...	.30	.30	.25 $\frac{1}{2}$	...
Ironworkers - structural						...
Labourers	.75	.75	.75	.75	.75	.75
Lathers - metal	.35	.30	.40	.35	.25	.25
Lathers - wood	.45	.35	.55	.50	.35	...
Marble setters	.45	.35	.50	.45	.35	...
Mortar makers, celanite mixer and plasters	.50	.45	.55	.40	.45	...
pourers	.40	...	.40	.35	.25	...
Operators - compressors and mixers	.45	.35	.55	.45	.40	...
Painters	.50	.40	.50	.40	.35	.30
Plasterers	.70	.55	.75	.60	.50	.50
Plumbers & steamfitters	.50	.40	.50	.40	.40	.35
Roofers - composition	.50	.40	...	...	...	...
Sheet metal workers50	.40	.40	.35
Terrazzo layers	.55	.45	.55	.40	.45	...
Tile setters	.55	.45	.55	.40	.45	...

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(a) The municipalities of Chicoutimi, Jonquiere, Kenogami, Saint Joseph d'Alma, La Riviere du Moulin, Ville Racine, Ile Maligne, River Bend, Arvida, Bagotville, Port Alfred, Grand Baie, Desbiens Mills and a radius of two miles from their limits and for all contracts of \$10,000 or more in the rest of the district.

Table 33 (cont'd)

Trades	Sherbrooke and neighbouring counties		Three Rivers and neighbouring counties		Drummond County		St. Hyacinthe	
	Sherbrooke & Municipalities of 5000 or more.		Three Rivers & Municipalities, 8000 or more		Drummond & Municipals 2000 or more		County	
	\$	Rest of District	\$	Rest of District	\$	Rest of District	\$	Rest of District
Bricklayers and masons	.60	.50	.70	.70	.55	.45	.55	.45
Carpenters & joiners	.50	.40	.55	.35	.45	.35	.40	.35
Cement finishers	...	...	.50	.35	.40	.30	.50	.30
Electricians	.50	.40	...	...	.50	.40	.45	.40
Hoist engineers	...	...	.65	.40	.35	.25	...	...
Ironworkers - ornamental								
Erectors	.50	...	...	...	.40	.30	.40	.30
Helpers	.35	...	...	...	.35	.25	.35	.25
Ironworkers structural								
Labourers	.65	...	.75	.75	.75	.75	.75	.75
Lathers - metal	.30	.25	.35	.25	.30	.20	.35	.20
Lathers - wood	.50	...	.45	.35	.35	.25	.45	.25
Marble setters	...	...	.45	.35	.35	.25	.45	.25
Mortar makers, celanite mixer and plasters	...	...	...	...	.40	.30	.45	.30
pourers								
Operators - compressors and mixers	...	...	.40	.30	...	...	...	...
Painters	...	...	...	...	...	...	...	...
Plasterers	.45	.35	.45	.45	.40	.30	.40	.30
Plumbers & steamfitters	.60	.50	.70	.70	.50	.40	.55	.40
Roofers - composition	.50	.40	.45	.45	.50	.40	.40	.40
Sheet metal workers	...	...	.45	.45	.35	.25	.40	.25
Terrazzo layers	.55	.40	.45	.45	.40	.30	.40	.30
Tile setters	...	...	.60	.40	.40	.30	.40	.30
	...	...	.60	.40	.40	.30	.40	.30

Table 33 (cont'd.)

Trades	Sorel	Joliette, Berthier and Montcalm counties		Island of Montreal and neighbouring counties		Hull and neighbouring counties	
		Joliette and Municipalities 4000 or more	Rest of District	Island of Montreal & City Valleyfield	Rest of District	Hull & Muni- cipalities of 5000 or more	Rest of District
	Town	\$	\$	\$	\$	\$	\$
Bricklayers and masons	.55	.60	.50	.80	.64	.90	.60
Carpenters & joiners	.50	.50	.40	.70	.56	.65	.50
Cement finishers	.50	.40	.30	.55	.44	..	..
Electricians	.50	.45	.45	.75	.60	.70	.60
Hoist engineers	.55	.45	.35	.60	.48	..	..
Ironworkers-							
ornamental							
Erectors	.50	.50	.40	.66	.53	..	..
Helpers	.35	.40	.30	..	..	..	..
Ironworkers							
structural	.75	.75	.75	.75	.75	.75	.75
Labourers	.35	.30	.25	.40	.32	.40	.30
Lathers - metal	.45	.40	.30	.75	.60	..	..
Lathers - wood	.45	.40	.30	.55	.44	..	..
Marble setters	.50	.50	.40	.80	.64	..	..
Mortar makers, celanite mixer and plasters							
pourers	.40	..	..	..	..	.45	.35
Operators - compressors							
and mixers	.40	.40	.35	.50	.40	..	..
Painters	.45	.35	.30	.66	.53	.65	.50
Plasterers	.60	.60	.50	.80	.64	.70	.60
Plumbers & steamfitters	.50	.45	.45	.75	.60	.85	.85
Roofers - composition	.50	.45	.45	.60	.40	..	..
Sheet metal workers	.50	.45	.45	.65	.52
Terrazzo layers	.50	.40	.30	.60	.48
Tile setters	.50	.40	.30	.70	.56

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TABLE 34

MINIMUM WAGE RATES AND MAXIMUM HOURS FOR CERTAIN BUILDING TRADES IN EFFECT BY ORDERS-IN-COUNCIL UNDER THE INDUSTRIAL STANDARDS ACT OF ONTARIO AT NOVEMBER 30, 1937.

TRADES	OTTAWA		CORNWALL		KINGSTON		PEMBROKE		TORONTO		HAMILTON	
	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week
	\$		\$		\$		\$		\$		\$	
Bricklayers and stonemasons	.85	44	.....		.....		.....		.90	40	.....
Carpenters and joiners	.80	44	.65	44	.80	44	.45	55	.....		.....
Electrical workers	.70	40	.....		.....		.....		1.00	40	.....
Labourers (building)	.40	50	.....		.....		.....		.50	48	.....
Painters-spray	.80	44	.....		.....		.....		.85	40	.85	44
Painters, paper-hangers, glaziers	.65	44	.....		.....		.....		.75	40	.65	44
Plasterers	.80	44	.....		.....		.....		.90	40	.....
Plasterers' labourers	.....		.....		.....		.....		.60	45	.....
Plumbers - journeymen	.83	40	.....		.....		.....		.90	40	.80	40
Plumbers - fifth year junior mechanics	.55	40	.....		.....		.....		.60	40	.53	40

TABLE 34 (cont'd.)

TRADES	KITCHENER		LONDON		WINDSOR		SAULT STE. MARIE		PORT ARTHUR AND FORT WILLIAM		TIMMINS.	
	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week	Wages per hour	Hours per week
	\$		\$		\$		\$		\$		\$	
Bricklayers and stonemasons	.80	44			1.15	40						
Carpenters and joiners	.60	48			1.00	40	.75	48			.67	55
Electrical workers			.80	44	1.00	40						
Labourers (building)	.40	48			.50	48						
Painters-spray												
Painters, paper-hangers, glaziers	.50	44										
Plasterers	.80	44			.90	40						
Plasterers' labourers												
Plumbers- journeymen			.80	40	1.00	40			.90	40		
Plumbers- fifth year junior mechanics			.53	40	.67	40			.60	40		

Barbers and Hairdressers.

In Quebec, eighteen agreements in the barbering trade are in effect under the Act, some covering several towns. The minimum wage-rate varies from \$12 to \$15 (\$20 in Hull) plus 50% of the proceeds over \$20 or over \$25 taken in by the employee (over \$31 in Hull).

Minimum wage-rates for female hairdressers are included in ten of the schedules, and vary from \$7 per week in one schedule to \$12.50 in six of the schedules.

In Ontario, schedules are in effect for barbers in thirty-one cities and towns including all the larger ones except Sudbury and Timmins. Hours are as provided in municipal by-laws. For those employed on a straight salary, the minimum varies from \$18 to \$25 per week. For those employed full time on a commission basis the minimum varies from \$12.50 to \$16 per week plus 50% or 60% of proceeds over a certain amount (\$19 to \$23).

Agreements in the barbering trade at Regina, Moose Jaw and Weyburn in Saskatchewan and in beauty parlours at Moose Jaw and Weyburn have recently been made binding under the Industrial Standards Act. They provide for barbers in Moose Jaw a minimum weekly wage of \$13 for 48 hours or \$15.70 for a 57-hour week, in the other two cities a minimum of \$16, or 60% (65% in Weyburn) of the proceeds from the work of the barber in a week, whichever is greater. Employees of beauty parlours at Moose Jaw and Weyburn are similarly guaranteed a minimum of \$13 per week or 50% of proceeds from their work, whichever is greater.

Appendix V. - Legislation Concerning Trade Unions in Canada.

Registered Unions under the British Trade Union Act of 1871 and the Canadian Trade Union Act of 1872.

Although there is no fundamental difference in the legal status of registered and unregistered unions in Britain, certain advantages do accrue from registration. A registered union, although not a corporation and still a voluntary association, is a legal entity under both statutes capable of suing and being sued in its own name subject in Britain to certain restrictions on actions against trade unions for tort.

A registered union may take summary proceedings in its own name for the recovery of moneys withheld or misappropriated by officers or members instead of having to resort to the more roundabout and expensive procedure open to an unregistered union as a voluntary association. It may acquire and transfer land not exceeding one acre and personal estate to an unlimited amount for the benefit of its members. Treasurers and officers of registered unions are bound to render an account and annual returns have to be made to a government official of the assets and liabilities and receipts and expenditures.

In respect of the above matters a registered union in Canada is in the same position as a registered union in Great Britain except that there are no statutory restrictions on actions for damages against trade unions in Canada outside of British Columbia.

Registered unions in Britain are exempt from certain laws applying to persons or bodies carrying on an insurance business and their funds are exempt from property and income tax in respect of interest and dividends applicable only to friendly benefits, provided that the rules of the union forbid any person being insured for more than £300 or subscribing for an annuity exceeding £52.

In Canada, the income of all trade unions is exempt from taxation under the Dominion Income Tax Act. Under the Foreign Insurance Companies Act, 1932, trade unions, like other fraternal societies or insurance companies, are required to make a deposit with the Superintendent of Insurance, but two unions⁽¹⁷⁴⁾ which had been exempted under the former Act, in 1895 and 1909 respectively, as organizations of persons whose occupations were of such a hazardous nature that they could obtain insurance in licensed companies only under stringent conditions, are still exempt.

Note on the Law of Collective Bargaining.

In a Canadian case (Young v. Canadian Northern Railway, 1929, 2 W.W.R. 385; 1930, 1 W.W.R. 446; 1931, 1 W.W.R. 49,) the Judicial Committee of the Privy Council held that a collective agreement has in itself no legal effect. It is not regarded as fulfilling the conditions of the law of contract. It is simply a voluntary agreement entered into for the general regulation of the working conditions of a given trade and district. It is an agreed set of rules, then, not a legal contract; it is subject to the interpretation of the parties concerned, not of the courts. However, if the terms of the collective agreement or any part of them enter into the individual contracts of workers with employers, they then become part of the individual contract of service and subject to the law of contract.

Further, a trade union has not the legal personality to enable it to make an enforceable contract. In Britain, it has been considered by some authorities that the Trade Union Act prohibiting the enforcement of an agreement between

(174) The Brotherhood of Locomotive Engineers & The Brotherhood of Railroad Trainmen.

one trade union and another has barred the enforcement of a collective agreement as a contract. In any case, no action to enforce a collective agreement appears to have come before any court in the United Kingdom.

These principles form the basis for the Canadian law on the subject, and apart from the effect of provincial legislation such as the Professional Syndicates Act of Quebec, is the law under which the enforceability of such agreements would be judged in Canada.

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Note on the Law of Picketing.

The law of picketing in Canada has been a constant source of dissatisfaction to labour. It is unsatisfactory because it allows a wide latitude for interpretation and has resulted in anything but uniform decisions. "Whatever may be the discontents of English trade unionists in this regard," says one legal commentator, "it is no exaggeration to say that Canadian labour has even more cause for dissatisfaction. The judges appear to flutter from precedent to precedent and often become involved in a web of contradictions so that it is impossible to extract lucid legal principles from their

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decisions.

The law of picketing is contained in section 501 of the Criminal Code.

501: "Every one is guilty of an offence punishable on indictment or on summary conviction before two justices and liable on conviction to a fine not exceeding one hundred dollars, or to three months imprisonment with or without hard labour, who wrongfully and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain;

(a) uses violence to such other person, or his wife or children, or injures his property: or

(175) For a concise review of the law of picketing in Canada see Jacob Finkelman, The Law of Picketing in Canada, The University of Toronto Law Journal, Vol.II, No.1 and Vol.II, No.2; and Margaret Mackintosh, Trade Union Law in Canada, P.83 seq.

(176) Jacob Finkelman, The Law of Picketing in Canada, University of Toronto Law Journal, Vol. II, No. 1, p.68.

- (b) intimidates such other person or his wife or children by threats, of using violence to him her or any of them, or of injuring his property: or
- (c) persistently follows such other person about from place to place: or
- (d) hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof: or
- (e) with one or more other persons, follows such other person in a disorderly manner through any street or road: or
- (f) besets or watches the house or other place where such other person resides or works or carries on business or happens to be:
- (g) attending at or near or approaching to such house or other place as aforesaid in order merely to obtain or communicate information shall not be deemed a watching or besetting within the meaning of this section.

Sub-section (g) relative to communicating information was part of a similar section in the 1876 act but at the time of the consolidation of the criminal law in 1892 it was omitted and not reenacted until 1934. The fact of the omission has been mentioned in several cases decided before 1934 and the effect of the 1934 amendment should be kept in mind when considering picketing cases.

The law of picketing is unsatisfactory because it allows a wide latitude for interpretation and consequently Canadian decisions have been anything but uniform.

The Canadian decisions on picketing have followed the English cases of Lyons v. Wilkins and Ward Lock & Co. v. Operative Printers Assistance Society, which were decided before the passing of the 1906 Act, when the English law was similar to our present Canadian law.

In the first case it was held that the plaintiffs were entitled to a perpetual injunction to restrain the defendants from watching and besetting for the purpose of persuading. Dicta included the principles that to watch or beset a house

with a view to compel a person to do or not do that which is lawful for him to do or abstain from doing, unless there is some reasonable justification, is a wrongful act because (1) it is an offence under Section 7 of the Conspiracy and Protection of Property Act and (2) it is a nuisance at common law for it interferes with the ordinary comfort of human existence and ordinary enjoyment of the house beset.

Then in the later case of Ward Lock Co., where the facts were similar it was held that the acts were protected by the proviso regarding "watching or besetting", that picketing might or might not be a nuisance at common law according to the circumstances of the case, and that in this case no common law nuisance was proved. The effect of the proviso was to exempt such acts from the penal consequences attaching to acts described in the section but to leave the civil law as it was before - if such acts were civil torts, they remained so: if they were previously criminal, their criminality was unaffected. Moreover 'wrongfully to compel' refers to acts previously wrongful. It is equally lawful to try to persuade a man to accept work and to persuade him to refuse work, provided the means are lawful. Thus it is necessary to show that picketing constitutes an interference with the plaintiff's actions which is wrongful at common law - i.e. a common nuisance.

We see, therefore, that there is some variance between the two decisions and Canadian judges have been more

inclined to follow the first case than the second.

(177) In a valuable footnote Professor Finkelman sums up the evidence on this point as follows: (Ibid., p.91)

In *Cotter v. Osborne* (1909) 10. W.L.R.354, the Manitoba Court of Appeal followed *Lyons v. Wilkins* without comment and without referring to the *Ward, Lock* case. In *Vulcan Iron Works Company v. Winnipeg Lodge No. 174, Ironmoulders Union*, (1909) 10 W.L.R.421, affirmed (1911) 16 W.L.R.649, the two English cases were referred to by the Manitoba courts but no reference was indicated since the trial judge found on the facts that the defendants were guilty of a common law nuisance. In *Meretsky v. Arntfield* (1922) 21 O.W.N.439 *Rose J.*, (as he then was) on a motion to continue an interlocutory injunction until trial, adopted *Lyons v. Wilkins*, but did not mention the *Ward Lock Case*. In *International Ladies Garment Workers Union v. Rother*, (1922) 41 Can Cr. Cas. 70, the Quebec court of King's bench accepted *Lyons v. Wilkins* as the binding authority; here also no mention is made of the later English decisions, and, in addition the court found as a fact that the defendants committed a nuisance and other unlawful acts. In *Robinson v. Adams* (1924) 56 O.L.R.217, *Middleton J.A.* refers to the *Lyons Case*, but only to point out that if, at the trial in the case at bar, evidence were given to prove that a nuisance had been committed, the plaintiff might succeed in obtaining an injunction. In *Rex ex rel. Barron v. Blacksaw*; *Rex ex rel. Barron v. Hangsjaa* (1925) 4 D.L.R.247, the appellate division of the supreme court of Alberta relied on *Lyons v. Wilkins*. In this case it is especially interesting to note the belief of *Stuart J.A.* that watching and besetting was not necessarily a nuisance at common law and that the attempt of *Lindley and Chitty L.JJ.* to decide *Lyons v. Wilkins* on that basis "was apparently a new application of the principle of common law nuisance" (at p.255). His lordship therefore concludes that watching or besetting with the view set out in the section is wrongful and without lawful authority whether it constitutes a nuisance or not. The *Ward Lock Case* was not referred to in any of the judgments. This failure to consider the latter case was commented on by the same court in *Rex v. Reners*, (1926) 2 D.L.R.236 (per *Harvey C.J.A.* at p.238), which is discussed at length in the text. In *Schuberg v. Local No. 118, International Alliance Theatrical Stage Employees et al.*, (1927) 1 W.W.R.548, the British Columbia court of appeal divided equally. *Macdonald C.J.A.* distinguished the case at bar from the *Ward Lock Case*, on the ground that in the instant case the facts showed that a nuisance had been committed. *McPhillips J.A.* followed the opinion of *Idington J.A.* in the *Reners Case*. *Macdonald and Martin JJ.A.* (dissenting) based their opinions on an interpretation of the British Columbia Trade Unions Act and did not consider the English cases. In *Rex v. Baldassari*, (1931) O.R.169, *Rose C.J.* intimated that the *Ward, Lock Case* was the appropriate precedent. He distinguished the *Blacksaw Case* on the ground that the Alberta court had overlooked the *Ward, Lock Case*. In *Rex v. Richards and Woolridge* (1934) 3 D.L.R.332, the British Columbia court of appeal again divided equally. *Macdonald C.J.A.* following what he believed to be the ratio decidendi in the *Reners Case*, held that the defendants (who had peacefully paraded in front of the complainant's theatre wearing raincoats which bore undisputed and uncontradicted statements of fact concerning the relations of the union with the complainant) were guilty of unlawful picketing. *McPhillips J.A.* adhered to his views in the *Schuberg Case*, but his judgment, in essence depends on a finding of conspiracy. *Martin J.A.* (dissenting) again based his decision on the British Columbia Trade Unions Act. *Macdonald J.A.* (dissenting) held that the judgment of *Idington J.* in the *Reners Case* was not the controlling judgment and that the case at bar could be distinguished from the *Reners Case* since there was no proof of nuisance on the evidence before him. In *Allied Amusements Limited v. Reaney et al.*; *Kershaw Theatres Limited v. Reaney et al* (1936) 3 W.W.R.129, *Donovan J.* relied on *Lyons v. Wilkins*. He seems to interpret the judgment of *Newcombe J.*, in the *Reners Case* as holding that to watch and beset in order to compel constitutes a nuisance, a construction which is, it is submitted, incorrect.

There have been many Canadian cases in which picketing as carried on in particular strikes has been held to be a nuisance at common law as interfering with the employer's business. In other cases, it has been held to be an offence of watching or besetting under Section 501 of the Criminal Code without reference to the common law. There has been considerable difference of opinion as to its legality where it intimidates or interferes with another's business and also differences as to what constitutes intimidation or unlawful interference.

It should be noted too, that the absence of the qualifying clause (g) in Section 501, as to communicating information, has been mentioned as a factor in some decisions but that in other cases the courts have simply followed the English cases. There has been no Supreme Court case on the law of picketing in so far as this clause is concerned but it is somewhat doubtful whether it will have any appreciable effect on the present standing of the case law.⁽¹⁷⁸⁾ It does not cover picketing for the purposes of 'peacefully persuading'. Certainly the effect of the British Columbia Act, which forbids action in cases of persons communicating information and persuading relative to a dispute, has been small. And recent cases suggest that the effect of clause (g) of Section 501, will be equally small.⁽¹⁷⁹⁾

(178) Professor Finkelstein concludes that "... since Lyons v. Wilkins suggests that the attendance is limited to obtaining or communicating information and a similar view has been adopted in Canada, the proviso is of slight benefit to trade unions." University of Toronto Law Journal, Vol. II No.1 p.101.

(179) Allied Amusements Limited v. Reaney et al.; Kershaw Theatres Limited v. Reaney et al., (1936) 3 W.W.R.129, where the decision followed Lyons v. Wilkins.

Appendix VI - Legislation Concerning Apprenticeship and Technical Education.

The Ontario Apprenticeship Act, 1928, the British Columbia Apprenticeship Act, 1935 and the Nova Scotia Apprenticeship Act, 1937. (January 1938)

Including those added by regulations, all three acts cover the following trades, - carpenter, painter and decorator, plasterer, plumber and electrician; Nova Scotia and Ontario cover bricklayer and mason; Ontario and British Columbia cover steamfitting and sheet metal work; Ontario alone has motor-vehicle repairer, hairdresser and barber; British Columbia includes automobile maintenance, sign and pictorial painting, ship and boat building, servicing and repair of current-consuming electrical appliances, jewellery manufacture and repair, machinist, lithographing (including artists, camera platemaking, press, press feeding), metal trades and automobile trades.

Ontario and British Columbia make provision for extending the Acts to other trades; Nova Scotia does not. All the Acts make 16 the age for beginning apprenticeship.

All three Acts provide for a Provincial Apprenticeship Committee (Board, in Ontario) set up by the Lieutenant-Governor in Council, to advise the Minister on matters relating to apprenticeship.

By a 1936 amendment, the Ontario Apprenticeship Board must appoint a provincial advisory committee for each designated trade or group of trades. The committee is to consist of five members: an equal number of employers and employees and an official or employee of the Department of Labour. The members are to be appointed annually.

In Ontario the provincial advisory committee, subject to the approval of the Board, may appoint local apprenticeship committees for defined areas whose duty it is to advise and assist the committee on all matters relating to apprenticeship in the particular trade within the defined area. Similar local

committees may be appointed in British Columbia by the Lieutenant-Governor in Council, to advise the Provincial Apprenticeship Committee.

All three provincial acts provide for a Director of Apprenticeship (in British Columbia, an Inspector), to register contracts, and generally, to see that the provisions of the Act are being put into effect. In Nova Scotia, the Director is to be assisted by the factory inspectors.

In Ontario, the Provincial Apprenticeship Board, had power to make regulations under the Act, subject to the approval of the Lieutenant-Governor in Council, but by an amendment of 1936, the provincial advisory committee now makes the regulations subject to the approval of the Board; in British Columbia and Nova Scotia, the Lieutenant-Governor in Council has this power. In addition to regulations extending the Act to additional trades, regulations on the following matters have been made in Ontario - obligations of the apprentice and the employer, entrance requirements for apprenticeship, registration, period of apprenticeship, hours of employment, wages, supervision of training and certificates of apprenticeship. Assessment regulations have been passed governing the assessment of employers in the designated trades for the purpose of maintaining a system of apprenticeship. British Columbia, in addition to extending the Act to cover new trades, has made regulations covering the obligations of employers and apprentices under the Act. No regulations have yet been recorded for Nova Scotia.

Under the Ontario Act, the usual period of apprenticeship is four years. It is provided that every person between the age of sixteen and twenty-one years in designated trades must be placed under a contract of apprenticeship. During the first two years the apprentices are required to attend day classes of a technical and trade-training nature under competent instructors (usually in connection with technical schools) during the

months of January and February. This period of intensive training was regarded as an essential part of the training of apprentices but it had to be discontinued because of the depression. The cost of administering the Act is borne by the Provincial government, and the cost of paying apprentices while at work and in attendance at classes is borne by the employers.

Appendix VII - Legislation Concerning Workmen's Compensation.

Coverage.

In general, all the provincial statutes cover employment, whether by way of manual labour or otherwise, in connection with or incidental to industrial undertakings including lumbering, fishing, mining, quarrying, manufacturing, printing, engineering and construction, plumbing, painting and decorating, transportation of passengers or freight by rail or water, trucking and cartage; operation of telegraph or telephone systems, power lines, waterworks and other public utilities, power laundries, bakeries, dairies, grain elevators, refrigeration plants or warehouses, freight or passenger elevators, lumber, wood and coal yards; scavenging and street-cleaning, window-cleaning, dyeing and cleaning. Automobile garages are mentioned only in Alberta, Manitoba and Saskatchewan, but as repair shops, they probably come under all the Acts, unless excluded by regulation of the Board where only a small number of persons is employed. Theatres and places where moving-pictures are exhibited are within the scope of all statutes. Shops and restaurants are covered only in Alberta and New Brunswick and hotels only in New Brunswick.

Whenever a municipal corporation, public utilities commission or school board carries on a business which would be within the Act if conducted by a private employer, all the statutes provide for its inclusion. On the other hand, municipal police and fire-departments are protected by the statute only in Alberta, British Columbia, Manitoba and Saskatchewan but they may be brought within the collective liability system in New Brunswick and Nova Scotia.

Persons employed by the provincial government in industries covered by the Act come within its scope in British Columbia, Manitoba and Quebec and may be included in New Brunswick and Nova Scotia. In Alberta and Saskatchewan, all

provincial government employees are protected. The Ontario Act contains no provision for provincial government employees but in practice all government departments report claims for their employees to the Workmen's Compensation Board and compensation is paid in accordance with the Act.

Certain classes of workers employed in industries covered by the Acts are expressly excluded from Part I or, in Alberta and Saskatchewan, from the Act. In some cases they may be admitted by regulation of the Workmen's Compensation Board. Among these classes are office workers, casual workers employed otherwise than for the purpose of the employer's business and out-workers, or persons to whom work is given to be done at home.

In all the provinces but Manitoba, clerical workers, in the industries within the scope of the Act, are covered. In Manitoba, they are outside Part I of the Act unless they are exposed to the hazards of the industry but the employer is individually liable for compensation as provided in the Act.

Casual workers not employed for the purpose of the employer's business and out-workers are not within the collective liability system in any of the provinces' Acts. All Dominion government employees, except the military, naval and air forces, are within the scope of the Acts but provincial and municipal employees are protected only as indicated above.

Industrial Diseases

Table 35 shows the industrial diseases for which compensation is payable under the Workmen's Compensation Acts by provinces.

Table 35 - Industrial Diseases for which Compensation is payable under Provincial Workmen's Compensation Acts.

Anthrax)
Arsenic poisoning or its sequelae)
Lead poisoning or its sequelae	)All provinces.
Mercury poisoning or its sequelae)
Phosphorus poisoning or its sequelae)
Ammonia poisoning or its sequelae	)New Brunswick.
Ankylostomiasis	)British Columbia)Manitoba, New Brunswick,)Nova Scotia, Ontario,)Saskatchewan.
Benzol poisoning	)Alberta, Ontario, Quebec,)Saskatchewan.
Benzene and its homologues, nitro and amidoderivatives of, poisoning	)Alberta,)British Columbia.
Brass, zinc or nickel poisoning	)Ontario.
Acute bursitis over the elbow miner's beat elbow)	)British Columbia, Nova)Scotia, Ontario.
Cancer arising from the manufacture of pitch and tar.	) )Ontario.
Carbon bisulphide poisoning	)New Brunswick, Ontario.
Carbon dioxide poisoning	)New Brunswick, Ontario.
Carbon monoxide poisoning	)Ontario.
Subcutaneous cellulitis over the patella (miner's beat knee)	)British Columbia, Nova)Scotia.
Subcutaneous cellulitis of the hand (beat hand)	)Alberta, British Columbia,)Nova Scotia.
Chrome poisoning	)Ontario, Quebec.
Compressed air illness	)British Columbia,)New Brunswick, Ontario,)Quebec, Saskatchewan.
Conjunctivitis and retinitis due to electro-and oxy-acetylene welding	)Manitoba, Ontario,)Saskatchewan.
Dermatitis and infection of skin or contact surfaces due to oils, cutting compounds or lubricants, dust (Alberta only), flour (Saskatchewan only), liquids, fumes, gases or vapours.	) ) )Alberta,)Saskatchewan.))

[illegible]

